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¶This magazine is an open forum for the free expression of opinion concerning public utility regulation and allied topics. It is not the mouthpiece of any group or faction; it is not under the editorial supervision of, nor does it bear the endorsement of, any organization or association. The editors do not assume responsibility for the opinions expressed by its contributors.

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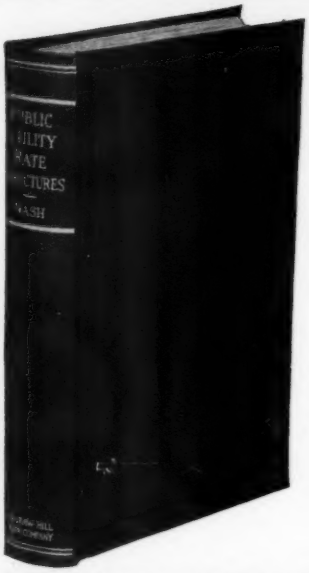

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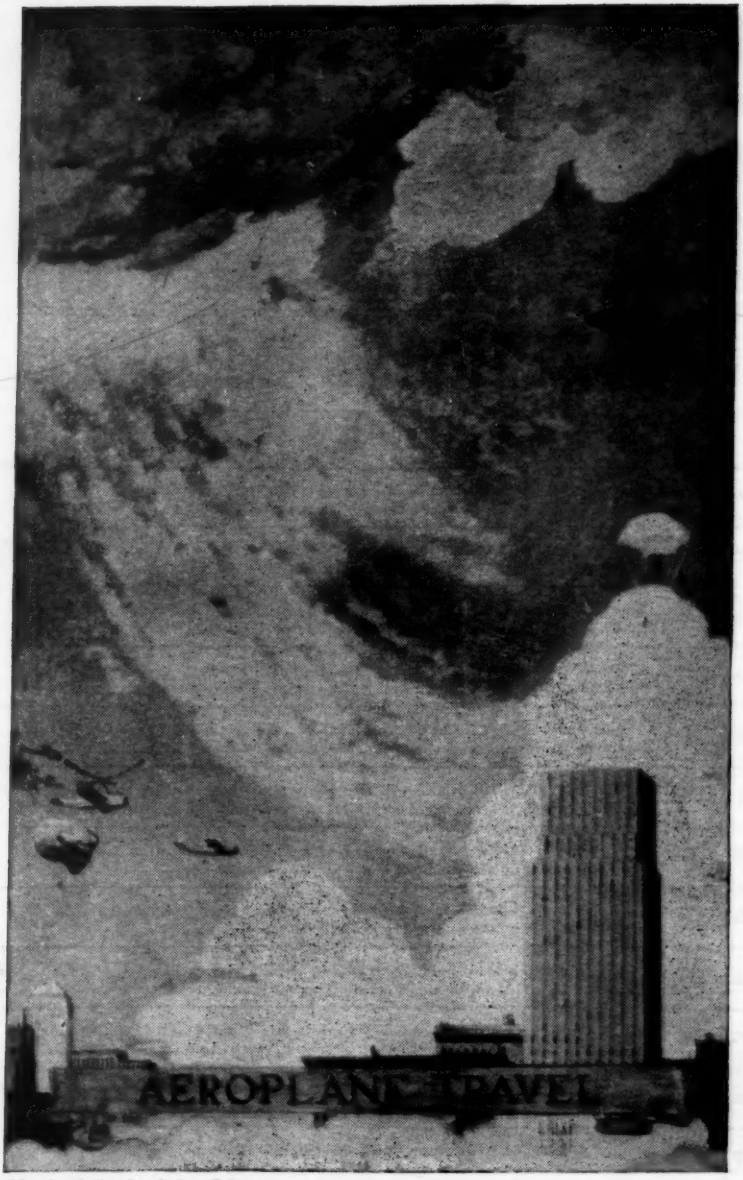
Public Utilities Almanack

JULY

6	T^{h}	The telegraph was first used for the control of railroad traffic, 1851. E. H. HARRIMAN announced the reorganization of the Union Pacific Railroad, 1897.
7	F	Illinois abandoned its state railroad after losing $15,000,000 in it, 1847. *"Antoine LeClaire,"* first locomotive in Iowa, arrived in Rock Island, 1855.
8	S^{a}	Regular stagecoach transportation between New York and Philadelphia began, 1758. N. Y. Central Lines inaugurated airplane-and-rail service, N. Y. to Los Angeles, 1929.
9	S	EDWIN J. HOUSTON, inventor of the arc lamp, was born in Virginia, 1844. The law creating the (then) Railroad Commission of Wisconsin was approved, 1907.
10	M	The first rail was laid in the construction of the Union Pacific Railroad, 1865. The state Corporation Commission of Virginia began its official existence, 1902.
11	T^{u}	ROBT. DAVIDSON drove a street car by electricity over standard gauge track, 1838. GEORGE PULLMAN engaged SEIBERT to build the first sleeping car, 1858.
12	W	PHILIPPE LEBON lighted his residence in Paris with artificial gas, 1801. Railroad strikes on eastern lines crippled transportation, 1877.
13	T^{h}	CYRUS W. FIELD laid the transatlantic telegraph cable, 1866. Dirigible R-34 reached England on return trip from U. S., 1919.
14	F	MARCONI maintained ship-to-shore radio communication at 100 miles, 1897. First double-decked motor busses were put into operation in New York, 1906.
15	S^{a}	RICKETTS organized first company to manufacture gas stoves for cooking, 1849. E. S. EVANS and L. O. WELLS set around-the-world record of 28 days, 1926.
16	S	CLERK MAXWELL propounded theory of electric waves in radio transmission, 1867. 100 railroad presidents agreed to move freight not less than 30 miles daily, 1920.
17	M	JOHN J. ASTOR, promoter of Mohawk & Hudson Railroad, was born, 1763. First steam ferry crossed the Hudson river from N. Y. to Jersey City, 1812.
18	T^{u}	E. H. HARRIMAN bought N. Y. Stock Exchange seat for $3,000, 1870. Western Electric Co. was incorporated to make Bell telephone equipment, 1881.
19	W	Cunard Steamship Company landed its first passengers in Boston, 1840. First news event reported by radio was account of Kingstown regatta, Dublin, 1901.



Mural painting by Arthur Crisp

The New Kingdom of the Clouds

Public Utilities
FORTNIGHTLY

VOL. XII; No. 1 JULY 6, 1933

The Peril to State Commissions in the Assault on States' Rights

How the awakened "social conscience," as manifested particularly in political attacks on the utilities, is affecting the present system of public service regulation and is menacing the existence of the state regulatory bodies.

BY WILLIAM A. PRENDERGAST

THOSE who are seeking a reason for the present restlessness in the public attitude towards capital, and especially that capital which is invested in utilities, will find it in what is generally believed to be an awakened "social conscience."

To many, this awakening of a social conscience is based upon a genuine spiritual protest against what is believed to be a flagrant abuse of capitalistic power. The attitude of these thinkers is not so much concerned with harsh retributive measures to be employed against capital, as with the promotion of a finer sense of social values which will clarify the relations that should exist between the public and those upon whom it confers public rights. The foregoing are the natural reactions of the social conscience.

THIS great awakening, which in many respects has been too long delayed, seems to be manifesting itself particularly against the utilities. Many investors in utility securities cannot understand why this should be so. They argue, and with great truth, that the economic maladjustments

which underlie the losses to capital and industry recorded during the past four years affect all branches of our economic life, and that the utility industry represents only a moderate percentage of our gross capital wealth. These investors overlook the fact that in every crisis a victim must be found. As Burke said, "You cannot indict a nation." But you can indict individuals. The politicians of this nation, led on by the not inconsiderable demagogic element among them, have cunningly discovered that it is better for them to have a single victim at which to shoot than to attempt to assault the entire capitalistic system—especially as they realize that they can easily arouse public sentiment against a special class which is operating under public rights. The larger aspects of the situation, which Karl Marx courageously assailed, are entirely beyond their intellectual capacities.

WHETHER unconsciously or through design, those who are resolved to pursue their attack upon the utilities have selected the Federal arena as the most advantageous ground for their operations. The consequence is that there has been developed a considerable amount of proposed legislation, some of which has already been enacted into law, which is serving the purposes of those who are promoting this attack. It naturally follows that there should be a further effort to control or dominate the work of the utilities and that all of the propositions advanced are not unwarranted. It must be admitted that some of the legislation offered during the past few months has great merit. In this class should be included the Securities Control Bill, the new Railroad Law, and the Motor Transportation Bill. Whether the Railroad Law would now be necessary if the Interstate Commerce Commission had exercised the power it has possessed for many years to bring about the consolidation of the railroads into workable systems, is another question which those responsible for this lapse of duty should explain and, it is hoped, be able to extenuate.

There is another class of legislation the merit of which is questionable. Such as:

The 30-hour work week;
The minimum wage bill;
Federal regulation of rates where business is interstate, aimed particularly at the electric industry; and the
Three per cent tax on the gross income of the electric business.

I am not implying that the 30-hour work week and the minimum wage acts would relate to the utilities any more than to all other businesses, but that they affect the utilities is indisputable.

I have referred to some of the forms (not all) that the Federal impact is assuming. It has an import much greater than the mere effect of these proposed measures. It illustrates an unmistakable tendency to substitute Federal for state control. Some of this proposed legislation is unquestionably unconstitutional, unless all constitutional provisions are subject to Mr. Justice Brandeis' "experimental theory" as set forth in the Oklahoma Ice Industry Case.

DO the states and do the state commissions particularly realize the

The Magazine of Wall Street

tendency of all this Federal control?

Apparently not.

The submission of Congress to this program would indicate the states have lost their sense of states' rights. Probably they think they can again assert these rights when the emergency is passed.

But the vigorous activities of the congressional opponents of the utilities are having another effect. They are making the state politicians believe that they can achieve a certain amount of glory, and perhaps retain some semblance of state control, by equally vigorous attacks within their own jurisdiction. These attacks are being directed by governors, legislatures, municipalities, and civic organizations.

But what is the inevitable result of these activities?

In nearly every instance they resolve themselves into assaults upon and criticisms of the state regulatory commissions. In other words, the claim is made that rates would be lower if the commissioners did their duty. The state commissioners are to blame.

Well, they may be—in some cases. But all of this criticism serves to undermine public confidence in the commissions.

But what form of regulation will we substitute for that of the state commissions? The answer that is coming fast is, that the state commissions cannot regulate, and that a Federal law will prove to be the panacea.

LET us consider a general review of the measures which have had their inception in forty-one states and

the District of Columbia since January 1, 1933. I have drawn the following data from the pages of PUBLIC UTILITIES FORTNIGHTLY. It represents but a part of what could be set forth, but it is sufficient to enforce my point:

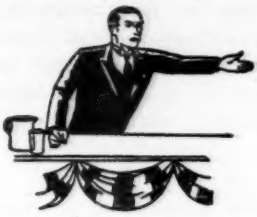
1. Legislative investigation of public service commissions.
2. Changes in the structure of commissions.
3. City control over rates where it is the grantor of franchises.
4. Legislative demands that commissions reduce rates by stated percentages of 25 per cent.
5. Disposition of municipalities to usurp functions of commissions.
6. State plans for distribution of electric power.
7. Establishment of coöperative telephone districts.
8. Assessments of utilities for costs of rate proceedings even where the complaint proves unwarranted.
9. Decision of Iowa Supreme Court that cities have the right to determine utility rates.
10. Authorization of municipally owned electric plants.
11. Threats to take over utilities through the organization of state power authorities.
12. Legislative proposal to give the cities rather than the public service commission the power to fix rates.
13. Strikes threatened to bring about lower rates.
14. Widespread demand for reductions in gas, electric, water, telephone, street car, natural gas, and street lighting rates.
15. Demand for reduction of power rates on the ground of the economic emergency.
16. Abolition of service and minimum charges.
17. Prohibition of merchandising appliances by utilities.

Among other demands stressed by legislatures, and in a few cases by commissions themselves, we find the institution of valuation proceedings to determine proper rate bases; limitations on the borrowing power of utilities; curbs on holding companies; regulation of the contractual relations of holding and operating companies.

IT may truthfully be said that many of these suggestions have been made in other years. But never has there been so great a variety of complaints and proposals, especially as they affect the state commissions or the state regulatory idea. It is a happy circumstance to call to mind that at least one commission (that of Tennessee) in answer to a legislative demand that rates be reduced 25 per cent, made a reply remarkable for its good taste and cogency, in exposing the absurdity of the legislative mind.

Some commissions, no doubt in a desire to avoid being directed to do so, have instituted rate inquiries of a wide range, notably the Illinois Commerce Commission. This action has been regarded as of such marked significance as to attract national attention on the part of the press.

One of the most striking instances of a deliberate attempt to place a commission in the position of requiring municipal dictation is the complaint recently lodged against gas and electric rates in the city of New York, by the government of that city. The official who introduced in the Board of Estimate and Apportionment the resolution of inquiry stated that reductions of $25,000,000 could be effected. Just how that could be done he did not explain; what is more, he probably cares little. It is to be hoped



Political Attacks upon the Utilities Are Undermining the State Regulatory Commissions

"THE vigorous activities of the congressional opponents of the utilities . . . are making the state politicians believe that they can achieve a certain amount of glory, and perhaps retain some semblance of state control, by equally vigorous attacks within their own jurisdiction. These attacks are being directed by governors, legislatures, municipalities, and civic organizations. But what is the inevitable result of these activities? In nearly every instance they resolve themselves into assaults upon and criticisms of the state regulatory commissions."

that the New York commission will make some reply, couched in the dignity and force of the Tennessee commission's reply to its legislature, revealing the fallacies of the political mind, in its vain attempts to explore business questions.

THERE are, therefore, two great forces at work in an endeavor to control the regulation of rates. One represents the influences of those who want to place all or a great part of the control of rates and capitalization in the hands of Federal authorities; the other represents the influence of those who attempt to preserve state control, but who through their denunciations of state commissions are constantly weakening the prestige of the commissions.

The trouble is, there is nothing within the state to substitute for the commission. Direct control of rates and service and capitalization by legislatures is impossible; its results would be laughable. To return to the cities the control over utilities they formerly exercised is unthinkable; very few cities can successfully manage the essentially municipal functions they now administer. To adopt some other form of commission offers no remedy. A one-man commission in our larger states would be unworkable. A commission divided into an administrative division and a division to pass on rate and service and capitalization matters would be no improvement, because the latter division would be subject to the same objections and the same criticisms that are now passed upon the present form of commissions. What the public or at least that part of it

¶ *"It requires no argument to enforce the statements here made that the people and legislatures of the states are destroying the regulatory principle as practiced in the states. Whether they intend to do so or not, they are fortifying the claims of those who assert that Federal control is better and stronger than state control."*

which is most vocal on this subject really wants is an impossible thing. It demands constant reductions in rates; it demands no increases in rates. Economic laws must not be made to apply to public utilities.

It requires no argument to enforce the statements already here made that the people and legislatures of the states are destroying the regulatory principle as practiced in the states. Whether they intend to do so or not, they are assuredly fortifying the claims of those who assert that Federal control is better and stronger than state control.

The measures here cited, and others of equally great significance (such as the proposed development of Muscle Shoals, Boulder Dam, and Columbia river), are all tremendous enterprises, the net result of which will be the subordination of state to Federal prestige and power. When we regulate electric and gas rates through a Federal agency because they are served interstate, we will be minimizing the control by the state, and soon it will be no more than it is now over motor vehicle service and when that service is interstate, state influence is a negation.

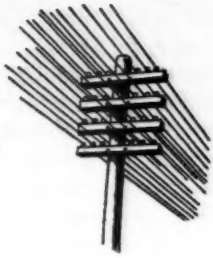
Is it too broad a statement to make at this time that as the states displaced the cities in all control over utilities we may be arriving at a period when the Federal government will displace the states?

From all this trend we can perceive the everincreasing decline, and in the future the extinction, of states' rights. The greatest safety valve in the workings of any democratic system of government is the exercise and preservation of local rights. Destroy them and we have destroyed the strongest element which supports that spirit of political self-reliance which made the American citizen an independent and forceful character. That character he is fast losing.

What with farm aid, Muscle Shoals, loans to states which will never be repaid, sections of the people taxed to support others, we are sacrificing the democratic ideal upon the alter of personal ineptitude and greed.

Has the Time Come for a Public Utility "Czar?"

In the opinion of F. J. Lisman, *the well-known investment banker of New York, the answer is "yes." In the next number of this magazine he will tell not only his reasons for believing that the utility industry is facing the need of a dictator, but he will also set forth the methods by which he may be chosen and placed in authority. Out July 20th.*



The Pending Conflict Between State and Federal Regulation

No. I: The Telephone Services

Among the state public service commissions there is much variation in methods of depreciation accounting. The Interstate Commerce Commission, acting under the authority of the Transportation Act of 1920 which prescribes such accounting practices for carriers—including by inference the telephone companies—is now seeking to impose its own formula upon the state regulatory bodies. The state commissions, are opposing this effort as an invasion of their prerogatives. The present status of this conflict is outlined in the following article.

By AARON HARDY ULM

BATTLE lines are forming for another decisive conflict between states' rights and Federal rights in the sphere of public regulation.

The pending contest is centered upon the regulation of telephone companies; while the immediate issue concerns control of accounting and of depreciation charges against operating costs, the underlying issue goes much farther; it involves a question as to the extent the Federal government may and can inject its hand of regulatory control over intrastate operations of the 40,000 or more companies which operate commercial telephone systems in the United States.

The huge industry that is animated by these companies is at the same time one of the most predominantly local in its operations as well as the most integrated nationally, so far as its ownership and management are concerned. Ninety-odd per cent of the transmission of telephone messages is done through operating companies which are subsidiaries of the American Telephone and Telegraph Company. In 1928 those companies handled nearly twenty billion messages; of this number only 1.3 per cent were long-distance or toll messages, which constitute the bulk of the interstate transmission done by them. It is estimated that only 10 to 15 per cent of all telephone business is done across state lines. Yet practically every commercial telephone company does, or at least shares, in carrying telephone business of an interstate nature. Thus the implications of United States Supreme Court decisions and

Federal legislative assumptions in recent years would seem to bring even the intrastate operations of practically every telephone company within reach of Federal supervision with respect, at least, to "any undue, unreasonable, or unjust discrimination against interstate commerce."

HITHERTO the regulating of telephone companies has been done almost exclusively by the states. However, nearly a quarter of a century has passed since the United States Congress gave to the Interstate Commerce Commission power to exercise a considerable measure of regulation of interstate telephone operations. About all the Federal regulatory body did under that grant of power was to set up—in 1913—a uniform system of accounting for and to require the filing of annual reports by telephone companies that do business across state lines.

Now the Interstate Commerce Commission unfurls a new blanket of regulation that is potentially if not actually so pervasive as to portend Federal supervision of many aspects of state control of numerous intrastate phases of telephone company operations. Against this, several state regulatory bodies—and even one that is sub-Federal—raise voices of rebellious protest. The opposition embodies dispute both of the constitutionality of the provision of law under which the Federal body moves in the premises and of the validity of some of the Interstate Commerce Commission's interpretation of the law. The Federal regulatory body takes the position that it is merely undertaking to administer the law as written by Congress; and that, while it will coöperate with and assist state regulatory bodies so far as feasible, the underlying issue of states' rights *versus* Federal rights is not for it but for the courts to pass upon. If carried to final conclusion (as it probably will be) the contest should yield an additional beacon light of clarification in the wide and widening twilight zone wherein there perpetually has been a clashing of sovereignties since the dual form of state and Federal government became that of this nation.

THE issue is a consequence of the Transportation Act of 1920, or, rather, of the tendency towards ultra-concentration of power in Federal quarters that was so pronounced ten to fifteen years ago. Under the administration of the great post-war amplification of Federal regulatory authority over public service carriers, state regulation of railroad operations has practically ceased to be, and state regulatory bodies have been reduced appreciably to the status of merely voluntary and investigatory collaborators of the Interstate Commerce Commission. Moreover, the great Federal regulatory agency has become, as a result of that act, something of an appellate tribunal with respect to state actions in the twilight zone of sovereign powers over public service enterprises. Among the illustrations of this there are a few which relate to telephone operations.

PRIOR to the passage of the Transportation Act, Federal laws specifically excluded from the regulatory jurisdiction of the Interstate Commerce Commission "the transmission of intelligence by wire or

wireless wholly within one state."

The Transportation Act directed the Federal regulatory body to prescribe for carriers—including by inference telephone companies—"the classes of property for which depreciation charges may properly be included under operating expenses, and the percentages of depreciation which shall be charged with respect to each such class of property." Deviations from those prescriptions when once applied were forbidden except by permission of the Interstate Commerce Commission, and there was no reservation as to intrastate equations.

As this was a new excursion into the sphere of regulation—and one that comprehended public solution of one of the most complex and debatable phases of what might be termed the science of business—the Federal body moved slowly.

"I know of no question which presents so many opportunities for mental enlargement as does the question of depreciation," says Joseph B. Eastman, the Interstate Commerce Commissioner who has directed Federal activities looking towards the application of that part of the Transportation Act which deals with the depreciation accounting.

The record of those activities is almost as intricate as the Einstein hypothesis. That record has been accumulating during a period of nearly thirteen years. Only recently has that part of the law which deals with depreciation been applied to telephone companies. At best a good many more years will pass before that application of the law will be entirely complete.

IN most points the record deals jointly with proceedings and discussions which relate to both railroad and telephone company depreciation accounting. Commissioner Eastman put forth a long report on the subject in 1926; it was intended at that time that the Interstate Commerce Commission would begin in 1928 to institute in the field of telephone operations the depreciation accounting policy it was evolving. But there was further delay, and another report was put forth in 1931. That last report was accompanied by an order decreeing that on January 1, 1933, the telephone companies should institute depreciation accounting as prescribed by the Federal commission. The new accounting became effective on that date only with Class A companies—companies which had annual revenues of $100,000 or more.

As the situation stands today, the new accounting will be instituted by Class B companies (ones with annual revenues of $50,000 to $100,000) on

¶ "Now *the Interstate Commerce Commission unfurls a new blanket of regulation that is potentially if not actually so pervasive as to portend Federal supervision of many aspects of state control of numerous intrastate phases of telephone company operations. Against this, several state regulatory bodies—and even one that is sub-Federal—raise voices of rebellious protest.*"

January 1, 1934, and action as to Class C companies (ones which have not more than $50,000 annual revenues) is in suspense.

The new system is largely a revision of the former system decreed for interstate operations of telephone companies by the same authority. The former system took account of the depreciation factor but it did not provide a classification of property therefor nor did it fix depreciation rates; those were left to the companies.

THOSE telephone companies which began the new accounting on the first of this year are required to file not later than August 1, 1933:

> " . . . estimates of the composite annual percentages of rates considered applicable to the book cost of each class of depreciable telephone plant. . . . These percentages shall be based upon the estimated service values and service lives developed by a study of the company's history and experience and such engineering and other information as may be available with respect to future prospective conditions."

The estimates are to be filed with state commissions where and when those bodies have authority and are willing to coöperate in developing the new arrangement as to depreciation accounting.

> "After consideration of the recommendations of the state commissions, this commission (the I. C. C.) will, by temporary order, prescribe the composite annual percentage rate which should be charged to each item of depreciable telephone plant."

Then there may be public hearings, "so far as possible" by state commissions. But the Federal regulatory body reserves all powers of final decision as to the classifying of property, already done, and the fixing of depreciation rates, yet to be done, and future revisions thereof.

Therefore, many of the state regulatory bodies view the procedure as one which portends a high degree of subordination of themselves to Federal authority, at least so far as intrastate telephone operations are concerned. For, they argue, with complete control of accounting and of depreciation charges, there will go by indirection large measures of control over all affairs, intrastate as well as interstate, of telephone companies. And a curious aspect of it is in the fact that large measures of indirect control may thus pass to the Interstate Commerce Commission over matters, like the issuance of securities, of which the Federal body now has no statutory power in the sphere even of interstate telephone operations.

HENCE in a document containing a blend of appeal and protest nine state commissions, including that of the District of Columbia, declared recently to the Interstate Commerce Commission:

> "Whatever may be the argument for the adoption of the proposed system of accounts where there are no state commissions having control over telephone companies, it certainly seems an unnecessary interference with state regulation where a fairly complete system of regulation has been established for your commission to undertake, through power of establishing systems of accounts, to influence and determine the action of state commissions regarding matters of which your commission has no jurisdiction whatever."

"Do you think we ought to approve a system of accounts which would permit the state commissions to require any accounting they see fit with respect to such matters?" asked Commissioner Eastman—the matters being ones of intrastate character.

"You are touching on a subject that goes to the very root of government

The Conflict Centers about the Methods of Classifying Depreciation Accounts

"THE Federal regulatory body reserves all powers of final decision as to the classifying of property, already done, and the fixing of depreciation rates, yet to be done, and the future revisions thereof. Therefore, many of the state regulatory bodies view the procedure as one which portends a high degree of subordination of themselves to Federal authority, at least so far as intrastate telephone operations are concerned."

in the United States," said Dr. Milo R. Maltbie, of the New York commission, who spoke for the protesting state bodies. "I think they ought to allow a state commission, when authorized by its legislature to do certain things, to function with that regard; and if the state goes wrong, goes off the reservation entirely, goes crazy, all right; the state has got to stand for it until it gets a remedy."

IN their actions that relate to intrastate functions, many of the state commissions followed the former Interstate Commerce Commission requirements in prescribing accounting methods for telephone companies. However, among the states as a whole there has been much variation in accounting methods and the establishment of depreciation. Some of the variation has been in principle; some of the state bodies, for example, do not look with kindly eyes on the straight-line method of depreciation accounting favored by the Federal regulatory body. But much of the variation reflects diverse conditions under which telephone companies operate in this country.

How the new arrangement portends regulatory difficulties at least for a time is illustrated by the situation of the District of Columbia Public Utilities Commission as presented in Interstate Commerce Commission proceedings. The District commission is a creature of the United States Congress in its capacity of "state legislature" for the District of Columbia. Congress thus gave to the District of Columbia commission a considerably broader range of powers over interdistrict telephone operations than it has given specifically (including the grants in the Transportation Act), to the Interstate Commerce Commission over interstate operations of telephone companies. Long ago the District commission was directed to see to it that every public utility under its authority should carry an adequate depreciation account by a method of kind other than that now prescribed for all telephone companies by the Interstate Commerce Commission. So in a brief filed on behalf of the District commission it is averred:

"The depreciation accounting prescribed by the Interstate Commerce Commission being on the straight-line method would prohibit a telephone company in the District of Columbia from maintaining depreciation accounts and applying depreciation rates mandatorily required by law in the District of Columbia, as well as by the lawful orders of the public utilities commission."

Thus does a creature of Congress as a "state legislature" grapple with a creature of Congress as the national legislative body and do battle for a states' rights equation in the operations of the Federal establishment!

In the District commission's brief the following appears:

"The decisions cited support the view that an effort to construe the provisions of the Interstate Commerce Commission Act as conveying exclusive jurisdiction over the accounts of telephone companies to the Interstate Commerce Commission would result in the invasion of the inherent and reserved rights of the states to require information for the purposes of regulation from public utility corporations operating within their boundaries and should be avoided as unconstitutional."

The District of Columbia relationship to the problem is analagous to that of those states—about forty, all told—whose regulatory commissions have power to regulate telephone companies. In general, the power of the state commissions is broader and more inclusive as to intrastate equations of telephone operations than the Interstate Commerce Commission's is of interstate.

THERE is a special phase of the subject that is presented by the District of Columbia commission's position.

At the time the revised system of accounting was prescribed by the Interstate Commerce Commission, the District's regulatory body was engaged in a controversy with the Chesapeake and Potomac Telephone Company regarding rates charged for service. A basic element of the dispute related to the determination of depreciation and the accounting for depreciation by the telephone company. In the courts, to which appeal was made by it, "the company contended during the proceeding and now contends that it is obliged to follow the method of depreciation accounting" prescribed by the Interstate Commerce Commission.

If that contention is sustained, state commissions will have to adhere at least to the method prescribed by Federal authority, which in itself will be a considerable endowment of the national regulatory body with power over intrastate affairs. There is little doubt, however, that the Interstate Commerce Commission will permit the subdivision of accounts within its method to be made for other regulatory bodies. Yet one of the grounds of complaint by those state commissions that have gone on record is that while the new system permits "companies to subdivide their accounts for their own purposes," the state commissions are "nowhere authorized to require subdivisions for purposes of public regulation."

"If you have jurisdiction over the depreciation rates in interstate service, these rates are going to be applied by the companies in interstate service," the spokesman for protesting state bodies said in a recent hearing on the subject.

At the same time a spokesman for them said that the Bell companies were willing to break down accounts for state commissions so long as the integrity of the Interstate Commerce Commission's prescribed system of accounting is not thereby affected.

Since that system of accounting makes for uniformity and continuity, it apparently is favored by at least the Bell section of the telephone industry. Apparently, the system is largely in line with that used when company control is exercised by those interests. But protesting commissions say a reason for telephone interest support is that the system tends to lengthen the distance between the hand of regulation and the scene of operations in many respects and gives to the removed Federal hand of regulation an influence in the determinations of state commissions on other matters.

A FURTHER hearing from state commissions and telephone companies by the Interstate Commerce Commission is scheduled. Any changes in the set-up as now formulated are likely to concern only the details of application. In that case, the underlying issue probably will be taken to the courts for review.

Several state commissions refused to participate in the pending petition of blended appeal and protest to the Interstate Commerce Commission. Their reason was that participation in the proceeding "might throw doubt on their later position." Representatives of two participating commissions reserved the right to proceed elsewhere.

"It is the opinion of the Wisconsin Public Service Commission that it has authority to require that accounts be kept as to depreciation rates by our order irrespective of any accounting requirements of the Interstate Commerce Commission," said Commissioner David E. Lilienthal who represented the Wisconsin body at a recent hearing by the Interstate Commerce Commission. The New Jersey commission likewise "unqualifiedly reserved the right to question any action that may be taken by the Interstate Commerce Commission on the ground that such action exceeds the jurisdiction vested by the Constitution" in the Federal regulatory body.

The subject has been one of recurring reports of special committees, discussion, and adoption of resolutions of protest by the National Association of Railroad and Public Utilities Commissioners. The resolutions usually have called on Congress to amend the law "in such way that jurisdiction of depreciation charges by telephone companies shall clearly rest with the various state commissions as it did prior to the enactment of the Transportation Act of 1920." Congress has taken scarce note of the appeal. The tenor of committee reports and the discussions of it have been to the effect that the provision of law in question envisioned large and unwarranted transfer or regulatory control of telephone companies from state to Federal agencies.

Facts and Fiction That Lie "Between the Lines" of Financial Statements

How *incomplete data may be—and sometimes are—perverted to give the semblance of authority to contentions both in the interest of and in criticism of the utilities. By* ARTHUR J. C. UNDERHILL—*in a coming number of this magazine.*

Why Rate Cases Cost Too Much

No one who has had practical experience with formal hearings held before state commissions and courts will deny that a considerable part of the time, effort, and money expended are unnecessary and wasteful—and costly to the taxpayer, to the ratepayer, or to the utility security owner. How can this extravagance be curtailed during the current drive for lower taxes and lower utility rates?

By C. B. COOKE, Jr.

Well-managed public utility companies neither want nor need to have their customers feel they have to go to court to get a square deal. Policy and the spirit of the industry points the other way, not because utility people have sprouted wings but because it's good business to compose matters across a table whenever possible. Sometimes, however, the issues are such that they must go to formal trial.

A review of the multitude of contests dragged through commissions and courts during two decades of regulation shows that some less costly way should be found to settle questions which come up when changes in rates are proposed. Otherwise the heavy expense of trying increasingly complex issues and the costly damage to public relations—an unseen by-product of court battles—makes of legal victory barren fruit for any of the parties at interest.

A survey of a few conditions known to every state commission and to utilities generally points to the need for correctives by better use of negotiation methods—"settlement out of court," so to speak, but under its active though informal supervision as representative of all groups. This is practical because commission organizations as a rule have been well developed with able personnel who understand utility problems from both company and public angles. They are eminently qualified to aid economy and to increase their own effectiveness.

It used to be that ordinary rate cases would be disposed of after one or two weeks of formal hearing, because it was then possible to keep the evidences in the case—pro and con—to points at issue which were relatively simple to understand and adjudicate. Today, however, due to changes in corporate affiliations and financial structures which have had to be worked out to meet changes in the physical situation due to inter-connected operations, the position of most electric utilities no longer has the strength of simplicity and of being a local enterprise.

On the contrary the utilities' position as regards rates and rate bases has become more open to attack as it

has become more delocalized and interlocked with "foreign" territorial, corporate, and operating conditions. When the relation of these to the local company's rates is brought into a case, complications start. Effects upon the ratepayer are made subject to claim and counterclaim *ad infinitum* so that real issues get lost in a welter of technical and irrelevant detail. Therefore, when rates are up for review it is now more than ever important to analyze the conditions of a case and what can be done to meet them, before any other move is made. By doing this and then preparing correct schedules of data covering the real points and set up so that they can be clearly explained, much expense is saved and, at the same time, the legitimate issues are made to stand out.

Possibly as much as 10 per cent of the voluminous records built up in typical cases is actually used or needed by public service commissions in reaching their judgments. The rest is dismal scenery for those who foot the bills (customers, public, and companies) as well as a monument to the fortitude of commissions who have to sift out the claptrap to get at the facts. Whatever gives rise to this condition of affairs, it cannot be laid entirely on regulatory doorsteps. One can see that as a matter of policy in meeting their many-sided problems, commissions may have to "let down the bars" to all sorts of evidence, so that nobody can say he did not have his day in court. There is, however, probably no commission that would not welcome simplification. Such facts can be foreseen and they should be allowed for when plans for negotiations are being made.

EVEN when minor changes are formally proposed, a company often finds itself faced by an opposition determined to drag in questions which have nothing to do with the case. They are designed to be and are "red herrings" drawn across the paths of useful inquiry. Such practices are indulged in with greater effects when major rate changes are being tried, so that the more important the case, the harder it is made to keep it simple. While the purposes are tactical and may be proper enough (depending on a commission's policy as to the kind of evidence it will admit to the record) the bad effects of not making litigants keep sharply in line with practical issues, work three ways to confusion worse confounded:

(1) Pertinent facts and conditions are obscured which cannot help but impair the qualities of a commission's judgment no matter which way it cuts:

(2) The conduct of the regulatory business and routines is hampered by crowded dockets and swollen records which adds much to the public costs of regulation:

(3) Litigants' expenses are vastly increased, particularly those of the service companies which generally feel obliged to supply all kinds of costly data on request (or whim) of opposing counsel, often desired for "fishing" purposes when his case is weak.

As such costs are on the ratepayers in one way or another, they have a direct interest in keeping the procedures as simple and as understandable as they can be made.

IN advancing this cause it is essential that companies be fully in-

formed as to the strong and weak points of their rate situations, and before they enter a negotiation in which potential issues may evolve into a case for commission or court hearing. Here the ounce of prevention, worth many pounds of cure, may be provided by developing the facts through complete technical preparation designed to meet not only the immediate questions but also those related issues which may be readily dragged in, once a rate procedure is started. Whether this takes the shape of an informal negotiation or of a formal case for commission hearing, the importance of fortifying with facts all along the line, taking into account all possible outcomes, should never be disregarded.

Instances are not lacking where companies have started proceedings when actually their cases had little or no merit and, therefore, invited an upset. Conversely, as well known, companies have yielded under fear of political or other agitations when the facts and indications called for rate increases or at least maintenance of the *status quo*, as against any revision downward.

CONDITIONS may exist in any negotiation that makes agreement impossible. If, then, the situation becomes one in which a complete valuation is required, costs of the process itself and of the hearings involved in making it part of the formal record, can sometimes be much reduced by making the inventory and appraisal a joint procedure, participated in by representatives of all parties. When this is done, the principles and method of the valuation and the plan of formal presentation of it together with other factors in the case, can be settled in advance of the hearings. By such means agreements can be reached on a multitude of technical points which, if not thus cleared up, lead to costly controversies in the formal hearings. In such joint procedures, only the differences need be submitted for ruling, thus simplifying the case for the commission and saving time and money for everybody concerned.

A further point is that savings in the costs of regulation would not detract from but would add to the efficiency of the process. For example:

In a recent valuation case it cost a company upwards of $2,500 to prepare and present an answer for just one of the questions formally put in the record by complainants, when it was perfectly plain that the data asked for could have no practical effect on the result. But it used up a week of a busy commission's time and added several pounds of paper to the record —but no whit to its value.

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ANOTHER example of conditions which, if not properly met, can put a company and its customers into costly proceedings is to be found in those cases where a local group of consumers apply informally to a company for rate reductions. These may be small in point of money, and considered only with an eye to their isolated effects on gross, would be conceded just to keep peace in the family. Perhaps, however, because the reduction, if granted, would affect the balance between rates and revenues in other service classes or set a rate precedent that would likely spread to much larger groups of the same class of consumers in other localities, the proposed decrease cannot be made. Thereupon the company is made defendant in a case that, before it is concluded, may cost several hundred times the amount of the minor reduction originally asked for.

Cases of this kind could be cited (and also cases involving small changes needed to make a rate promote business) which were forced to blossom out into comprehensive, hard-fought valuation cases, taking in fields of inquiry no wise related to the real points at issue. The direct out-of-pocket expense in some of these for the batteries of lawyers, engineers, accountants, executives, and other witnesses employed to defend against and prove up data for pointless subjects dragged in after the case got under way, has been well over $200,000; probably the indirect costs of the public bad feeling engendered and of the precedents set amounted to twice as much. These cases could have been settled out of court with large savings had there been more reasonableness in the initial meetings combined with some simple commercial proofs, approximate valuations costing little to make, and a few demonstrations of "cost-of-service." None of these were made because the actual and potential issues had not been fully "sized up" nor the right kind of data prepared for use in the preliminary stages.

For example, when rates are under fire in one locality served by an interconnected system, one of the main issues may be the true total cost-of-service at "city gates." In such situations the issues can often be handled so that they can be settled without making an expensive valuation of a company's total property when perhaps a valuation of a part of it would serve the purpose. This can be readily done in some types of rate situations.

IN some of the cases referred to, the companies picked employees to represent them who had marked ability for their operating jobs but who were handicapped by not having at hand information needed for negotiation work. Consumer interests were represented by those who had no knowledge of the kind of problems they were dealing with.

Burdens such as these are plainly out of all reason and they react in many ways on the service and on the ratepayer. They are, in fact, becoming so great that companies, rather than incur them, increasingly tend to yield on points of their rate structure and principles which should be persistently guarded for good of the business and of the users of the service. They do this also in the belief that

The Waste Involved in the Compilation of Nonessential Data

"POSSIBLY as much as 10 per cent of the voluminous records built up in typical cases is actually used or needed by public service commissions in reaching their judgments. The rest is dismal scenery for those who foot the bills (customers, public, and companies) as well as a monument to the fortitude of commissions who have to sift out the claptrap to get at the facts."

it will keep "sore spots" from their public relations. While this is always a matter for judgment of the management, too fine a regard for this point, important though it be, will make any company an easy mark for "chiseling."

GOOD relations with customers may be kept or improved in other ways than "peace at any price," or than buying them with undue cuts in the rate. The trouble is that they don't stay bought. New doses are always needed.

A company which is inclined to overdo in voluntary rate cutting depletes its own reserves against a rainy day; it also makes trouble for neighboring companies which, under their conditions, cannot afford this way of getting their customers' good will. Keeping on an even keel in such a situation, with something "up the sleeve" to use when need on occasion waits, is certainly a safe and constructive policy in uncertain days.

Query: How many companies which went in strong for retail rate slashing when it was justified by volumes of power business since vanished, now wish they had not gone quite so fast?

This point will certainly be a factor whenever retail rates are under review.

THE term "negotiation" as here used does not mean blind horse-trading, though often this does intrude as an obvious purpose. It means reaching by reasonable, expeditious, and open methods an agreement which is acceptable to all parties as substantially just and right under all the conditions as in accord with provable facts.

When rate problems arise it may be that operators are too close to the details of local conditions to get a

good perspective of the various points involved and methods for treating them in the most effective way. Sometimes better progress can be made in the initial stages when operators, though present at the meetings, do not take a leading part, in view perhaps of their local interests and affiliations, and because they occupy, in effect, the position of a principal. The procedure is greatly helped, too, when consumer interests are taken care of by men of ability and discernment who understand the nature of problems to be worked out; also when the representative of a public service commission, if it is willing to aid, has the qualities to promote purposes of the meetings. All parties to these should, of course, have access to the best of legal counsel when questions dealt with involve rules, precedents, and procedure of the law.

As there can be no quarrel with the idea of settling out of court whenever it is possible, it may well pay any company to take steps to improve its bases for negotiation by broadening and developing the classes of information applicable to rate and cost-of-service problems of the business. Some companies and commissions are equipped by experience and technical data and are rich in personalities for bringing about agreements leaving a good taste all around. Others, however, are sometimes lacking in one way or another as to either personnel, methods, or knowledge of rate administration and cost-of-service factors such as would help in reaching satisfactory agreements. There cannot, of course, be any prescribed formulas for the procedures or of what is required for reasonable dealing with questions as they arise and which may be debatable in view of at least some of the negotiators. The requirements cannot be learned out of a book; they are either seen instinctively as meetings progress and questions come up or they are not seen at all, in which case negotiations peter out and the issues go to court.

No matter what the difficulties are, certainly it must be remembered at all times in rate negotiations (or any other kind for that matter) that human equations and factors outweigh technical facts (regardless of their dry importance) in so far as success of the negotiation *per se* is concerned. Many a meeting about to blow up has been turned with a happy remark; also, the most encouraging progress has been wrecked more than once by ill-timed remarks or abrupt, impatient, or sarcastic replies. Negotiations can thus be quickly upset and their ends defeated. Who, among those mixing in such affairs, cannot remember when all the apples were spilled because some of these liabilities showed up?

The chances for agreeable and proper adjustment of difficulties are greatly increased when meetings are based on sincerity of purpose, honesty and breadth of view, ordinary tact, even tempers, a sense of humor, and a good perspective on the relative import of the "bones of contention." Negotiations are also aided by ability to discuss without arguing and consideration for the legitimate rights and interests of all parties.

When such bases are backed up with tolerance for others' opinions, perseverence toward the objects, issues are simplified and the way paved for settlement at least cost.

A UNIQUE EXPERIMENT IN

State Regulation That Rescues the Utility Instead of the User

Some of the far-reaching principles of commission control of industries "affected with a public interest" as enunciated in New York's milk control law

By HENRY C. SPURR

New York state has a new emergency price-fixing statute. It fixes the price of milk. The law was hastily passed—apparently to arrest violence in connection with a strike of farmers who were holding up trucks and dumping milk in the highways to prevent delivery to city homes.

Offhand one would think that if any consideration were given to the legality of such a law, the legislature must have passed it on the theory that the production and sale of milk is a public utility business, because the general impression is that unless the production and distribution of milk is a public utility business the government has no power to regulate prices.

But the New York legislature has attempted to give the milk price-fixing law two legs instead of one to stand on. One of these is public health; the other is public interest. The statement of legislative policy is as follows:

"This article is enacted in the exercise of the police power of the state, and its purposes generally are to protect the public health and public welfare. It is hereby declared that unhealthful, unfair, unjust, destructive, demoralizing, and uneconomic trade practices have been and are now carried on in the production, sale, and distribution of milk and milk products in this state, whereby the dairy industry in the state and the constant supply of pure milk to inhabitants of the state are imperiled. That such conditions constitute a menace to the health, welfare, and reasonable comfort of the inhabitants of the state. That in order to protect the well-being of our citizens and promote the public welfare, and in order to preserve the strength and vigor of the race, the production, transportation, manufacture, storage, distribution, and sale of milk in the state of New York is hereby declared to be a business affecting the public health and interest. That the production and distribution of milk is a paramount industry upon which the prosperity of the state in large measure depends. That the present acute economic emergency, being in part the consequence of a severe and increasing disparity between the prices of milk and other commodities, which disparity has largely destroyed the purchasing power of milk producers for industrial products, has broken down the orderly production and marketing of milk and has seriously impaired the agricultural assets supporting the credit structure of the state and its local governmental subdivisions. That the danger to the public health and wel-

fare is immediate and impending, the necessity urgent and such as will not admit of delay in public supervision and control in accord with proper standards of production, sanitation, and marketing. The foregoing statements of fact, policy, and application of this article are hereby declared as a matter of legislative determination."

THE new law sets up a milk control board to be composed of certain state officials who are given power to fix minimum and maximum wholesale and retail prices. Milk dealers must be licensed. The fees run from $25 to $5,000, according to the quantity of milk sold. Licenses may be revoked for a number of reasons, among which are the following:

"(a) That a milk dealer has rejected, without reasonable cause, any milk purchased from a producer or has rejected without reasonable cause or reasonable advance notice, milk delivered by or on behalf of a producer in ordinary continuance of a previous course of dealing, except where contract has been lawfully terminated.

"(b) That the milk dealer has failed to account and make payment without reasonable cause, for any milk purchased from a producer."

The price fixed by the board must be such as will best protect the milk industry and thus safeguard the public health and promote the general welfare. In fixing rates the board is required to take into consideration "all conditions affecting the milk industry, including the amount necessary to yield a reasonable return to the producer and to the milk dealer."

THE stated purpose of the legislature, however, is that the benefits of any increase of prices received by milk dealers by virtue of minimum prices fixed by the board shall be given to the producers. It was the producers and not the dealers who were striking and dumping milk in the highways. It was, therefore, the producers rather than the dealers or consumers whom the legislature had most in mind when they passed this milk law. The aim was higher rates for milk. The grounds for the revocation of dealers' licenses also indicate that it was the producers that the legislature chiefly had in mind in passing the law.

CONSTITUTIONAL objections, however, must be avoided if possible. Now the New York legislature undoubtedly has power to safeguard the public health by appropriate legislation. So this milk price-fixing law was passed, the legislature says, to preserve the health, the strength, and vigor of the race. But any connection between higher milk prices and health that may exist would appear to be remote rather than immediate and urgent. The connection would be more plausible if the demand were for reduced prices. The consumers, however, were not complaining of an inadequate supply or of high prices. Higher prices would tend to decrease consumption. It is difficult to understand how the people of the state could be immediately invigorated by decreasing their ability to obtain this invigorating food.

In the long run it might be in the interest of the consumer's health to pay a sufficient price for milk in order to insure a continuance of production, but any danger to the public from an interruption of the milk supply would not appear to be "immediate and impending," to use the language of the legislature, because of an abundant supply of pure milk at a low price.

IF the state has the power to fix the prices of commodities, the sale of which has a remote bearing on the

health, comfort, and welfare of the people, its rate-fixing powers are much more extensive than has been commonly supposed. If this relation between prices and health really exists, the state would have the power to fix prices of all staple foods sold by grocers and butchers. It could say how much should be paid for bread, eggs, butter, meat, and potatoes. It might fix the prices to be charged for the services of physicians or surgeons; and, if the power of the state extends to public comfort as well as public health, why can it not fix the prices of shoes and shirts?

Once the power of the government to regulate prices as a health measure is established, it would not be likely to exercise that power very long for the purpose of raising prices. In regulated business the dominant voice is that of the consumer, not of the producer. The consumers of milk greatly outnumber the producers.

THERE is often a kick back to laws demanded and established at one time or another for a special purpose. During the period of high prices when street railway companies and some other utilities were asking for increases in rates it was found that some of them were operating under franchise contracts in which the rates were fixed by agreement between municipalities and the companies. The utilities asked that these contracts be set aside.

"Why should such contracts be ignored?" asked the ratepayers. "Other contracts are binding; why not public utility rate contracts?"

The trouble with this argument was that when former rate franchise contracts, by reason of changed economic conditions, had become burdensome to ratepayers, the ratepayers succeeded in having them set aside on the ground of the superior power of the state to establish reasonable rates in the public interest. So contracts which would not stand in the way of rate reductions, it was found, would likewise not stand in the way of rate increases.

The same thing occurred in the establishment of the rule that utilities are entitled to a reasonable return on the fair value of their property. This was demanded by ratepayers at a time of low values, but when established it was also applied during a period of high values.

It might easily happen that milk producers who hastened the New York milk legislation by a spectacular strike may, during a change of circumstances, be the first to complain against any precedent they succeed in getting established in favor of legislation of this nature.

So much for the regulation of milk

¶ "THE *state commissions have been severely criticized for maintaining an impartial attitude as between the companies and their customers in rate controversies. If this is so, how about the milk control board? Is it the duty of this board in fixing reasonable rates for milk to act in a fair and judicial manner, or is it its duty to represent the public utility; that is to say, the milk producer or dealer?"*

prices upward as a health measure.

BUT the New York lawmakers have attempted to support the legality of the milk law as stated on another ground. The legislature declares that the production, transportation, manufacture, storage, distribution, and sale of milk in New York state is a business "affecting the public health and interest." The production and distribution of milk is declared to be a paramount industry upon which the prosperity of the state depends.

If a business is in fact "affected with a public interest," the state has the power to regulate its prices or rates. To state that a business is affected with a public interest is the technical or legal way of declaring it to be a public utility.

The New York legislature says the milk business affects the public interest. This may not be quite the same as saying that the milk business is affected with a public interest. The legislature has not used technical language, but taken in connection with the declaration that the milk business is a paramount industry upon which the prosperity of the state depends, the probability is that the legislature intended to declare that the business is "affected with a public interest" in the technical sense.

If so, dairying joins the list of occupations upon which legislatures of late have tried to stamp the public utility status in order to fix prices. Most attempts to substitute legislation for economic laws in the case of public utilities have been meant for the benefit of consumers. Here, as with the Federal farm relief measure, it is the other way around. The New York law, regarded as an economic measure, is for the benefit of the public utility rather than the public as the latter term is usually understood in the discussion of public utility regulatory questions.

This is a convincing answer to the assertion sometimes made by utility men that our legislatures are hostile to public utilities *per se*. Here we have positive proof that if a legislature believes that public utilities need aid they will give it. It may turn out, it is true, that this law cannot be sustained on the theory that the production and sale of milk is a public utility business, but that does not alter the fact that the New York legislature so regarded it, and that the legislature nevertheless was willing to come to the aid of a public utility at the expense of the consuming public. Unkind critics might charge that in this case the legislature was utility minded rather than public minded, but why not in a proper case?

INCIDENTALLY this law raises a very nice point. It is the duty of the milk control board to fix reasonable prices. In doing so, the board must take into consideration all conditions affecting the milk industry including the amount necessary to yield a reasonable return to the producer and to the milk dealer; that is to say, to the public utility. This is not unlike regulatory laws affecting other public utilities. But here, the legislature was thinking of the milk producer, in other words, the public utility.

These questions might, therefore, arise:

Whom should the milk control board represent—the public utility or the public?

The Main Purpose of the Statute Is to Aid the Producer at the Expense of the Consumer

"Most attempts to substitute legislation for economic laws in the case of public utilities have been meant for the benefit of consumers. Here (in the case of New York's milk control bill), as with the Federal farm relief measure, it is the other way round. The New York law, regarded as an economic measure, is for the benefit of the public utility rather than the public."

Should it act in a *quasi* judicial manner in fixing milk prices, or should it administer the law in the interest of the public utility milk industry?

In the case of commissions regulating other utilities, the view of some publicists is that the state commissions should represent the public. By the public they mean the customers of utility companies. If the utilities do not like this, it is said they may appeal to the courts. It is wrong, some students declare, for the commissions to assume a *quasi* judicial attitude. They say the legislature intended to set up the commissions for the benefit of utility company customers. Therefore, they conclude it is the duty of the commissions to represent utility customers. The commissions have been severely criticized for maintaining an impartial attitude as between the companies and their customers in rate controversies.

If this is so, how about the milk control board? Is it the duty of this board in fixing reasonable rates for milk, to act in a fair and judicial manner, or is it its duty to represent the public utility; that is to say, to represent the milk producer or the dealer?

Of course, the circumstances surrounding the milk industry are somewhat different from those affecting other utilities. It may be that the state board, in the opinion of some critics, should represent the public utility in this case rather than the public. If they take that attitude, it will show that they are not averse to being utility minded rather than public minded in a proper case.

It would seem to be the better opinion, however, that regulatory commissions should act in a nonpartisan rather than a partisan manner in controversies between public utilities and their patrons, and that this policy should prevail whether the utility is rich or poor. It does not seem quite right that the milk board should represent solely the milk utility—if it is a public utility—any more than that other commissions should represent solely the utility customers.

Assuming that the state has the power to fix maximum and minimum prices of milk, either as a health measure or on the theory that the produc-

tion and sale of milk is a public utility business, milk producers in demanding this legislation are surrendering a very valuable liberty.

FREEDOM in the choice of a calling and freedom of contract in respect to prices have hitherto been regarded as very valuable rights, valuable enough to be protected in the Constitution of the United States. Milk producers for a temporary advantage are apparently willing to throw away these rights. The tendency of governments is to extend rather than to diminish their powers. Once such a power is established, it is not likely to be relinquished.

If the state has the power to fix milk prices, it also has the power to say who shall or shall not engage in the milk business. It may require certificates of public convenience and necessity. If a group of producers or a dealer is serving a certain territory, the state may keep others out.

Just now the producers will be benefited by an increase in the minimum price of milk, but, under other circumstances, consumers might demand a decrease in prices. They would be sure to do it sooner or later if the power of the state to fix prices is once established. During the period of high living costs there was no demand that milk prices be reduced by the state, either as a health or economic measure, probably because no one at that time thought the state had power to do so. But, if the consumers find out that the state has such power, it will not be long before they will demand that it be exercised in their behalf. Price regulation is a double-edged sword.

THEN there is the question of taxation. The constantly expanding activities of our governments mean expanding expenses. So our political leaders are always looking for additional sources of revenue for the government. New public utilities would hardly be overlooked.

If milk service is a public utility service, why might we not expect a special tax for the privilege of using the streets for the delivery of milk? The argument would be that the streets were being used for the special benefit of the public utility milk industry. It is true that in the delivery of milk the streets are really used for the service of those who receive and consume the milk, otherwise they could not get it. But the same is true of all other utility service. It may be proper to tax these consumers for the privilege of receiving this service, but the point is that it would be urged on the ground that the streets were being used for the benefit of the milk utility, and that would make it easier to tax the consumers who might believe that the tax was levied against a public utility and, therefore, not object to it. However, this tax would add to the cost of milk to the consumer without benefiting the producer. Its tendency would be to decrease rather than increase consumption.

In the long run it would seem better for milk producers to stand out for the constitutional guaranty of liberty in the choice of a calling and freedom of contract with respect to prices rather than to break into the utility field or to come under governmental control on the theory that milk prices affect the public health and that the industry is a public utility.

What Others Think

How Will the New Industrial Recovery Bill Affect the Utilities?

IN the last issue of this magazine appeared an observation in this department to the effect that the National Industrial Recovery Bill (also popularly known as the "control-of-industry" bill) probably would not affect public utilities as much as the other eighty-odd major industries subject to it. But since the final enactment of the law a careful study of its provisions indicates that utilities may be considerably if not, indeed, vitally affected.

One might suppose offhand that, inasmuch as the public utilities have long been regulated by state and Federal authorities, according to the nature of their services, the new blanket regulation thrown by the Recovery Bill over all major interstate industries would merely superimpose upon the utility group a brand of regulation so much less stringent and so much more superficial than that to which it is already subject, as to leave little substantial impression—amounting to little more than making an algebra student pass an examination in long division.

The fallacy of this first impression is revealed when one reads the act carefully.

LEAVING aside, for present purposes, the second part of the act which has to do with public works and appropriations necessary for them, we find that the industrial control features of the bill have three definite points of regulatory contact:

1. The regulation of competitive production; that is to say, the regulation of such evils as overexpansion or overproduction, or unfair competitive practices incidental thereto.

2. The regulation of industrial relations; that is to say, the fixing of minimum wages, working hours and conditions, rights of collective bargaining, and other incidental matters affecting industrial employees.

3. The regulation of competitive distribution; that is to say, the fixing of minimum prices and the elimination of unfair marketing practices between industrial competitors.

The act sets up no definite agency but leaves to the President the power to select his own means. It does, however, give him an effective enforcement weapon through the "licensing provision." This weapon consists of a grant to the president of the power to chase any disobedient industrial unit out of the channels of interstate commerce by refusing a license to it. Utility regulators will easily recognize in this feature our old friend the "certificate of convenience and necessity." And just as the certificate of convenience and necessity has long been used in utility regulation to keep out unwanted and unwarranted competition by proposed new utilities with those already established and rendering satisfactory service in a given territory, so we may fairly assume that the President may use his licensing bludgeon, not only to beat already existing recalcitrants back into line, but also as an effective method of industrial birth control. In this way, also, we see how the first problem—production control—can be handled. Overproduction and overexpansion simply will not be licensed. A quota of production based upon reasonable demand will be assigned to an industrial trade organization whose members will decide among themselves how it shall be equitably apportioned among

the member units and woe betide the maverick member who won't play ball with the majority.

Before noting a few observations by current writers on the effect of this bill upon the utilities, it should be noticed that operating utilities are apparently in a favorite position to escape the licensing weapon because of their peculiarly local character. Bar a textile manufacturer or a furniture manufacturer from interstate commerce and you have effectively crippled them, but what cares the local gas and electric companies if they fail to receive licenses to sell in "interstate commerce?" Some gas and electric companies and, of course, the Bell system use interstate channels extensively. Would the sins of subsidiary children be charged against their corporate parents or affiliates? Or will the separate corporate entities be honored? This is one of the many legal wrinkles of the law's provision which the courts will have to smooth out.

So far as the regulation of production is concerned, it is doubtful if this power will bother the utilities very much as between each other. Utilities are already effectively regulated in this respect. They produce only as much gas or electricity as they need in their own territory, and by reason of their reguated monopolies have not sinned by overproduction. But what about competition from the new invading governmental activities? What about the aim of the administration to foster new construction? Mr. P. W. Ellsworth, writing in *The Annalist,* states:

> "Now it has been repeatedly emphasized by economists, and it is obviously a principle adopted by the administration in the Thomas inflation amendment to the Farm Relief Act, that one of our greatest present needs is new construction. Normally with any upturn in general industrial activity the power and light utilities would be among the first to require additions to plant and equipment. The long-time trend of the industry has in the past been sharply upward and, as has already been shown, the effect of the depression has been scarcely more serious than to flatten out the previous increase in demand from two of the most important classes of consumers. But if no provision is made for the utilities in the present planned economy program and if the government is to stand by while the utilities are slowly, but surely, ground between the upper millstone of rate regulation and government competition and the nether millstone of increased operating costs, whence will come the capital required for new utility construction? From the huge issue of government bonds also projected by the inflation amendment? Perhaps."

In other words, if competition from governmental sources continues, utilities may be compelled to ask that the production control features of the act be applied to them and to their official competitors.

Mr. Ellsworth's suggestion about the increase of utility operating costs through the operation of the emergency legislation brings us to the second aim of the act—price control.

Here again we may expect that the Federal government in applying the act to utilities will avoid duplicating the rate regulation of the state commissions. Furthermore, it is to be noticed that the act visualizes only "minimum" price control. It will not work the other way and compel price reductions. On this point, the weekly magazine *Telephony* contains the following interesting comment:

> "It is reported that some telephone companies are hopeful that in some way the Industrial Control policy being framed will help them to raise their service rates. This idea probably grows out of the fact that when the government took over the communication systems during the World War, the Postmaster General authorized the increase of telephone rates that in many cases were plainly inadequate to cope with war-time conditions.
>
> "Present circumstances, however, hardly point to the same results. It is not yet definitely determined how far Industrial Control will affect the telephone business—or any other utility—but the belief is held by those most familiar with the situation that there will be no door opened to raising the rates paid by the public. In fact, the chances are that if the government finds that extended supervising or controlling of utilities might lead to the public paying higher service rates, it would eliminate them from the Industrial Control plan.

St. Louis Daily Globe-Democrat

THE TRIAL PERFORMANCE

"Washington has no intention of being a party to increasing service rates. There is no purpose at the capital to fly in the face of the nation-wide complaint about rates, no matter how ill-founded that complaint may be.

"As a matter of fact, utility companies are not expected to be classed with the major industries slated for government control under President Roosevelt's 'New Deal' plan. The principal concerns aimed at are large manufacturers and producers that are in highly competitive fields, and that sell merchandise to the general public.

"The administration's purpose is to put these great industries on a basis so they can expand their activities and operate under conditions of hours of work and wages that will create more jobs. Under Industrial Control the government could reach out and prevent competitors from underselling and disrupting the constructive policy of establishing fair commodity prices.

"It is apparent that this need does not exist in the public service field—telephone, gas, electric power—where prices, meaning rates, are already fixed by state authority.

"The Federal government has no intention of trespassing on states' rights."

IT is in the field of industrial relations —the fixing of minimum wages, working hours, and conditions of employees that the utilities will experience

a brand of regulation entirely new to them. True, the state commissions have in the past occasionally disallowed excessive utility officials' salaries as "operating expenses." In a recent rate case, the South Carolina commission ordered a utility to cut its entire payroll 20 per cent, but that regulation was in the opposite direction. Wages were *lowered* for the benefit of ratepayers. Under the Recovery Act, utility employees' wages may have to be *raised*. This, added to the current burden of Federal and state taxation, the other increased operating expenses resulting from inflation, and the reduced earning power of utility revenues resulting also from inflation (not to mention the nation-wide cry for utility-rate reductions and the general "utilities-be-damned" attitude of the public) may make the position of the utilities very trying, indeed, unless rapid business recovery ameliorates these adverse conditions by pronounced stimulation of consumption of public utility service.

The Recovery law will be administered through trade associations, we are told. In other words organized business will tell the government what to tell organized business to do. Trade associations will thus be given a semi-official capacity and much greater responsibility than they have heretofore possessed. The utilities are in this respect very fortunate in having at the very beginning such efficient, well-organized, representative, and intelligent trade bodies as the Edison Electric Institute, the American Gas Association, the American Transit Association, and the telephone associations.

—F. X. W.

NATIONAL INDUSTRIAL RECOVERY BILL. *The United States News.* June 3–10, 1933.

THE OUTLOOK FOR THE POWER AND LIGHT UTILITIES. *The Annalist.* June 2, 1933.

INDUSTRIAL CONTROL, THE UTILITIES AND THEIR SERVICE RATES. *Telephony.* June 10, 1933.

The Effect of Present Economic Changes on Utility Valuations and Rates

PROFESSOR O. C. Ruggles, of the Harvard School of Business Administration has just produced a "problems" book for classes in public utilities. In considerable part this volume is made up of excerpts from decisions of commissions and courts, yet it is not a case book in the strict sense, for each excerpt is fitted into a general discussion by the author, and thus every topic has a unified development. Furthermore, the facts in the various cases are presented in the author's own words, probably much more briefly and clearly than if they had to be dug out of decisions and testimony, and the courts and commissions are directly quoted, in the main, only on important questions of principle.

Not all of the sections deal primarily with legal and regulating problems. Production management, organization finance, and marketing occupy large space. And in many of the sections or subsections dealing with these matters, decisions of courts and commissions are neither quoted nor referred to. For the problems are not there primarily legal or regulatory.

The section of the book of most interest to the reviewer is that on Valuation, Rate Making, and Fair Return. In this section there are, among other things, extended quotations dealing with the controversy regarding valuation for purposes of rate regulation. Much more space is given to the dissenting opinion of Justice Brandeis in the O'Fallon Case than to the opinion of the majority of the Supreme Court. Considerable space is given to a dissenting opinion by Commissioner Eastman of the Interstate Commerce Commission in the Richmond, Fredericks-

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"ONCE TO EVERY MAN AND NATION COMES A MOMENT TO DECIDE"

burg and Potomac Railroad Company Case, which seems distinctly unsympathetic to present costs as a basis for rate regulation. In the reviewer's opinion, there is lacking a clear and full presentation, anywhere in the book, of the case for present costs. Indeed, the impression derived is that the men whose discussions are stressed do not fully understand the logical basis for such a system of valuation.

To illustrate, we find (on pages 525, 526) quoted from Justice Brandeis the statement that "a fluctuating rate base would thus directly imperil industry and commerce and investments made at relatively high price levels during and since the World War." But now, with prices in general rapidly falling, is it not clear that a *stable* rate base which would tend to prevent reduction of rates when all other prices are falling really tends far more to "imperil industry and commerce"—and investments too, so far as concerns other lines than public utilities?

Some of the objections presented to reproduction cost (page 528) are, in-

deed, valid. But no intelligent advocate of the present cost theory would urge that present cost means the cost of duplication or reproduction of obsolete plant.

THE advocate of prudent investment as a basis for valuation rarely has seemed to be willing to face seriously the fact of a changing value of money. This is not, of course, the only matter involved, for the cost of constructing the plant necessary to render a given service may change even though the general price level does not. But changes in the value of money are sometimes of tremendous importance. And so it would be encouraging if this problem were even fairly faced by the prudent-investment theorists. Most of these theorists have appeared to insist that a reasonable per cent return is to be allowed to the public utility on the number of dollars (or francs, marks, or pounds) regardless of any change in the purchasing power of the money unit. If a public utility plant in Germany had cost (prudent investment) 100 million marks before the war, would 6 or 7 million marks a year have been a reasonable return at the height of Germany's period of inflation and when a mark would buy, perhaps, about one trillionth as much as before the war? If a plant was constructed in the United States in 1929 at a cost (prudent investment) of $100,000,000 and if deflation goes on until in (say) 1935 prices are only half as high as in 1929, must the public continue to pay rates yielding 6 or 7 million dollars a year, dollars that will buy twice as much as the dollars of 1929 and that will be twice as hard to earn?

Will our "liberals" who favored the prudent investment basis while our prices were rising, now frankly urge that rates must and should be kept high enough so that a $100,000,000 company can continue to make $6,000,000, the equivalent (should prices by 1935 fall to half) of $12,000,000 in 1929? Will they urge such special protection to the public service industries even while other industries are compelled to suffer liquidation?

If they do not so urge, can their position be regarded as consistent? If they do so urge, will they still be classed as "liberals?"

—HARRY GUNNISON BROWN
University of Missouri.

PROBLEMS IN PUBLIC UTILITY ECONOMICS AND MANAGEMENT. By O. C. Ruggles. New York: McGraw-Hill Book Co., Inc. 1933. 737 pages. $6.

One Commission's Attitude toward "Welfare Credit" to Customers

ONE of the most interesting and unusual developments of the depression, so far as the public utilities are concerned, occurred in the state of Washington when the department of public utilities on May 18, 1933, sent to all water, light, and gas utilities functioning under its jurisdiction a letter urging them to extend credit and, if necessary, free service to needy consumers during the period of economic depression.

Of course, this was not a formal order, and it presumably left the utilities with the option to follow the suggestion or otherwise. The letter, which is self-explanatory, is of such significance as to justify the following reproduction in full:

> "It has come to the department's attention that certain officials and representatives of public utility companies have been and are stating that their companies are prohibited by the rules and regulations of the department of public works from furnishing free service or credit to persons in need thereof. In order that there may be no misunderstanding the department is issuing this memorandum stating the principles which it believes should apply.

"Concededly the primary object of public utility service is advancement of the general welfare. Concededly also this objective, when necessary, must take priority over profits. Most public utilities recognize this. Most have also from time to time stressed their social value. This is proper if, when occasion requires, they meet their responsibilities in this respect.

"The service which water, light, and gas utilities furnish is indispensable. People's very existence depends thereon. Yet at present many citizens, through no fault of their own, are without means to buy this service. This situation cannot continue.

"The companies which furnish this service, practically without exception, and at little or no additional cost, have an abundance thereof available. If the cost and the social nature of the service, as well as the necessities of the customers and their ability to pay, are to be given consideration in determining what are just, fair, and reasonable rates, then there is no reason and certainly no justice or fairness in attempting to charge these customers any rate at all, or in withholding service from them because, having no funds, they cannot do the impossible and pay therefor. It will constitute no undue burden for the companies which have this service available to contribute the same to the public good, or at least through credit extensions to stand by until times are better.

"The department, therefore, states that it not only believes that free service, or service upon credit, should be furnished to all those whose needs therefor have been or may be approved by the county welfare boards created by Chapter 8, Laws of 1933; but also that it earnestly and sincerely urges and requests all public service companies under its jurisdiction to so furnish such service upon such terms.

"Should any company feel that amendments to its schedules or tariffs on file with the department are necessary to conform hereto the department will be pleased to approve the same."

IN the last paragraph of the letter there is an implication that if a utility finds the burden of carrying charity consumers too great, it may receive authority from the commission to revise its rates proportionately. This may be unfounded; but if this is what the commission means the net effect, of course, would be to have the consumers who are able to pay for their service share, in whole or in part, the burden of furnishing such service to consumers who are not able to pay for it. This is a fundamental departure from governmental policy which has heretofore been generally accepted in this country, by which the burden of social obligations has been placed upon the tax-paying public.

Under the new policy, the rate-paying public may have to share this burden.

—F. X. W.

MEMORANDUM TO ALL PUBLIC SERVICE COMPANIES IN WASHINGTON. By the Department of Public Works. May 18, 1933.

The Royal Road to Regulatory Revolution

UTOPIAS themselves are fairly easy to plan; the chief difficulty always seems to be in finding a sure method for continuous, efficient management—a sort of economic perpetual-motion machine that will run along on even keel notwithstanding even the possible and occasional ascension to ruling power of a Bonaparte, or a Hitler.

The latest blue print for the millennium comes from the pen of Dr. Rexford G. Tugwell, modestly described on the title page as Professor of Economics at Columbia University, but more generally known as one of the heavyweights in President Roosevelt's "brain trust." Viewed in this light, Dr. Tugwell's book becomes of importance and interest because it gives a compact, balanced picture of the underlying philosophy of the major legislative policy of the present administration. The book does not claim any such purport, but after reading it one does not have to do much more than to put two and two together to understand just where the various major Roosevelt recommendations to Congress fit into the picture.

BOILED down to a sentence, Dr. Tugwell would solve our economic

problem by reducing all major business to the effective status of public utilities, as exemplified in the National Industrial Recovery Bill.

These changes advocated by public men and being actually translated into legislation before our eyes at Washington are so fundamentally revolutionary that few of those who follow the Washington news from day to day are really aware of the dynamic consequences and possibilities in them. In the past each business was free to make all the profit it could. Competition was encouraged and, indeed, enforced by antitrust laws. Individual initiative was glorified. Now comes the "brain trust" with plans to divorce business from individualism. All businesses will henceforth be compelled to harmonize with each other under the baton of Washington. There will be notable exemptions of course, but the opening chords in this national industrial symphony will have been actually heard by the time this appears in print.

This necessarily puts a terrific strain on leadership. Granted that we have an honest and able *maestro* now living at 1600 Pennsylvania avenue, N. W., what guarantee have we that Dr. Tugwell is not putting all of our eggs in one basket for some political maverick, perhaps yet unborn, to boot us to annihilation? The old constitutional theory of "checks and balances" would be a poor safeguard, for no democratic referendum could possibly catch up with the blundering of leadership in time to avoid the consequences under such superconcentrated, supersensitive government control.

One wonders that this possibility of a bonehead on the throne did not impress Dr. Tugwell in the course of his indictment of past leadership. He tells us that we had (prior to the New Deal) a dual system of government—political and commercial. The political leaders walked carefully to avoid offending the commercial leaders. They left "social control" to industrialists, financiers, and their lawyers, "a set of irresponsible, possibly badly trained, and certainly self-interested" people who half managed, half neglected affairs of whose consequences they have had no adequate conception, "but from which they have no hesitation in draining the last penny of profit."

Certainly there is abundant evidence now available to prove many of the counts in Dr. Tugwell's indictment of our industrial and financial leadership up to 1933; but by that very token is it not possible for greed and avarice to accede to the seats of the mighty after the New Deal has become a little worn? Substituting Washington for New York may clean up the situation for the present, but will it continue on indefinitely?

One rather suspects that the college professor in Dr. Tugwell is venting a grudge against the now discredited moneyed men who formerly held the cap and gown in such light regard. We do know now that the professorial mind has been unduly abused as "theoretical" and unrealistic. But Dr. Tugwell asks us to have a very unusual amount of confidence in the cap and gown when he talks of the future functions of economists:

> "What seems most desirable is that we should, for the moment, accept the conditions of our existence, but should try to build on these conditions a future which would be more desirable. It would be comparatively easy to dynamite the industrial system; it requires a long and rigid discipline of training and of creative thinking to bring it into the service of human needs. We have with us always the easy exhortation to rebellion; we have too little of the kind of unspectacular, highly expert ability which can create, of what we have so far achieved, the kind of world we all of us would like, very different from the present, yet built on it as a foundation."

THE intrusion of Federal government as the Grand Exalted National Public Service Commission to control all business, Dr. Tugwell justifies on grounds of "social justice." He tells us then of the future functions of our politicians:

> "Every statesman will be forced, in the coming years, to ask himself searching questions which have to do with economic responsibility. The anguish of the wounded on the battlefields of France lay no

heavier on the heart of Woodrow Wilson than the sufferings of idle men and women must lie on the hearts of statesmen in the coming years. Theories and traditions weighed very lightly in the scale over against the exigencies of efficiency which might save some lives in the process of establishing victory. Theories and traditions will again be weighed in the balance against the economic insecurity with which civilization has now joined battle."

Here is another fundamental change. It used to be that a citizen could dispose of his property as he pleased. Under the New Deal it can be taken from him, in part at least, by a vote of the people, and political leaders, being "expressions of a social will," have a duty to administer what used to be called confiscation. Dr. Tugwell's answer, of course, (and it is a very good one), is that only under such a system can private property be preserved—a "halfway house," so to speak, on the road to Moscow. He points out that unrestrained competitive, individualistic economy will eventually defeat its own purpose and very likely culminate in a rebellion that would take us all the way to Moscow. And so, he wants "national planning" in place of the "piecemeal regulation." Washington now speaks of this as an emergency economy measure, but Dr. Tugwell (who seems innocent of all constitutional inhibitions) declares that it is a sensible policy for all times, this "serialization" of our economic life.

ACCEPTING his prognosis, the details of Dr. Tugwell's "serialization" seem very sensible. He would create governmental agencies "to issue certificates of convenience and necessity to industrial organizations on presentation of evidence of the affiliation of a certain per cent of the productive facilities of any single industry." On these boards various interests, including labor, would be represented.

Can it be that Dr. Tugwell is so impressed with the record so far made by state commission regulation of utilities that he is prepared to use it upon a national scale for all business?

And what will happen to us if we do all these things?

Here is where Dr. Tugwell takes his bearings through rose-colored binoculars. He visualizes a world in which the machine is once more the faithful and submissive slave of man, who will spend his time fishing, golfing, or perhaps attending classes at Columbia University. He speaks of "a future in which delicate adjustments are multiplied, in which switchboards will control operations, in which no labor will be done except of experiment and repair."

Dr. Tugwell's idealism is like a breath of fresh air in this materialistic age which has heretofore rejected the idea of any plan or purpose to the universe. Dr. Tugwell sincerely believes that there is, in the future, a perfect Utopia and that we will reach it sooner or later even if by way of a revolutionary detour. He is a *rara avis* indeed—the apostle of economic determinism; a twentieth century John Calvin. Most of us, perhaps, are not so sure. We hope he is right and that just around the corner there is a little bluebird.

Anyway, it is some relief to have in command leaders who act as if they knew what they were doing and where they were going. There is nothing else to do so we may as well go along willingly—with Congress.

However, one word of caution may not be amiss. This is not the first time revolutionary changes in our social order have been urged. But our present institutions did not spring up without substantial reasons for them. Perhaps the reasons no longer exist. On the other hand, perhaps they do. Liberty was an ideal cherished by our forefathers. Maybe they were foolish; but possibly they were wise.

—F. X. W.

THE INDUSTRIAL DISCIPLINE AND THE GOVERNMENTAL ARTS. By Rexford G. Tugwell. 229 pages. New York: Columbia University Press. Price $2.50. 1933.

Popular Delusions about Political Power Projects

ONE wonders while reading the book "The Great Delusion" what the reaction of the public would have been, had the ventures of the government in business been related to the public through security purchases instead of through tax payments.

The author, Ernest Greenwood, presents in this volume an understandable financial report of the results of operation by government of the railroad, insurance, power, irrigation, and other business undertakings. If government has been successful in business, Mr. Greenwood has been unable to find evidence of it. And "The Great Delusion" is one of those books which proves that its author has conducted extensive researches and carefully studied an enormous amount of documentary material.

The results of these investigations, clearly and readably presented, make one wonder how far the present exploitation of the taxpayers to continue unsuccessful ventures could have gone had each project been financed by security issues and upon which a dividend had to be paid. It would seem from the evidence that the Insull card house would appear like a Rock of Gibraltar compared with the concealed crash in the business ventures of government.

Government is guilty of a ruthless policy of "high finance" but since its methods are such that no investors are scalped, there is no political value in calling the government an American Kreuger. If government has not yet succeeded in scalping the taxpayer, Mr. Greenwood conclusively shows that it, at least, has bled the victim and then starved him by its competition.

MR. Greenwood also examines critically the fundamental circumstances which year after year lead government into business ventures despite its discouraging experiences. It is an understandable explanation of the forces at work in a democratic nation which enable destructive socialistic proposals to receive sufficient general assent to be enacted into law. I believe Mr. Greenwood would be satisfied if I summarized his analysis of these forces as follows:

(1) The political advantage derived from attacking institutions and certain kinds of business which the public does not understand. He says: "Politicians play with grave economic questions and issues like children, with no thought but political expediency." (Page xix.)

(2) The demand of different interests and groups of people for socialistic measures for their own advantage against the other fellow—"in other words, socialism for profit." (Page 61.)

(3) The highly organized socialistic and communistic elements of our population and the international program for enfolding all peoples of the earth in the "Russian experiment." Mr. Greenwood presents very good reasons for the non-recognition of Russia.

But Mr. Greenwood does not hold a brief for capitalism. "The trouble with socialism is that like capitalism or political dictatorship, it becomes a disease when carried to extremes. . . . Capitalism, without restraint, tends to financial control, . . . socialism tends to communism. . . . Capitalism in this country is restrained from going to extremes by law—antitrust laws, state and national regulatory laws, and all sorts of governmental commands and prohibitions. These laws have a socialistic tinge in that they are presumably designed for the benefit of the whole people. They are social rather than socialistic. . . ." (Pages 3, 14.)

AS one might guess from the title, Mr. Greenwood also indulges in the sport of pricking bubbles. The bubbles about which "The Great Delusion" is written are neatly pricked by a delightfully presented array of ordinarily dry economic data. The American people have many delusions: That municipally owned utilities operate at

lower costs: That water power can be economically supplied as a by-product of flood-control and inland waterway developments. That state regulation of utilities has "broken down."

But the "great delusion" concerns the cheapness of power from water running down hill. The "justification for any particular hydroelectric development does not lie at the waterfall. . . . It lies at the other end of the transmission line which takes its product to the nearest available market." And he proves it.

After reading 216 pages which effectively show that government in business is universally disastrous and that socialism is dangerous, it was, to say the least, a disappointing shock to read the nineteenth chapter entitled "A Suggestion." Mr. Greenwood's suggestion for business recovery and stability is to finance consumers. But how? "If they have to have help from the United States Treasury, all well and good—after all, the Treasury belongs to the people, even though some Congressmen don't seem to realize this fact." Then he says: "This may sound socialistic, but it is not."

What is it then, merely "social?"

Perhaps this book has unfortunately fallen into the hands of an oversympathetic reviewer. But I tried to be critical. The evidence against government in business is drawn from such a great diversity in experiments that even advocates of political meddling should wish to move with exceeding care into any more ventures.

The reading of "The Great Delusion" is not encumbered with documentation. Even the critical reader, however, will not find reason to doubt the authenticity of factual statements made by the author.

—ARCH D. SCHULTZ

THE GREAT DELUSION. By Ernest Greenwood. New York: Harper & Brothers. 238 pages. $2.50. 1933.

Other Articles Worth Reading

PUBLIC UTILITIES AT THE CROSSROADS. By Harwood F. Merrill. *Forbes.* June, 1933.

THE POWER TRUST PICKS IT'S OWN JUDGE. By Mauritz A. Hallgren. *The Nation.* June 21, 1933.

THE "FOUR HORSEMEN" IN THE UTILITY OUTLOOK. Government regulation, Federal competition, increased taxation, and declining revenue; what they portend to the utility industry. By Ernest Greenwood. *The Magazine of Wall Street.* June 10, 1933.

Publications Received

STOP THAT SMOKE! By Henry Obermeyer. New York: Harper & Brothers. 1933. 290 pages. Price $2.50.

TELEVISION: To-Day & To-Morrow. Sydney A. Moseley and H. J. Barton Chapple. New York: Isaac Pitman & Sons. 1933. Third edition. 198 pages.

UTILITY CORPORATIONS. Federal Trade Commission, Report No. 41: Tide Water Power Co., Florida Power Corp., Nebraska Power Co. Washington: United States Government Printing Office. 1932. 836 pages.

UTILITY CORPORATIONS. Federal Trade Commission, Report No. 42: New England Public Service Co., Georgia Power & Light Co., Arkansas Power & Light Co., Mississippi Power & Light Co. Washington: United States Government Printing Office. 1932. 1024 pages.

UTILITY CORPORATIONS. Federal Trade Commission, Report No. 43: Northern States Power Co., The Minneapolis General Electric Co., Louisiana Power & Light Co. Washington: United States Government Printing Office. 1932. 860 pages.

WHAT ELECTRICITY COSTS. A symposium on the cost of distribution to domestic and rural consumers, edited by Morris Llewellyn Cooke. New York: The New Republic. 1933. 232 pages. Price $1.

Remarkable Remarks

"There never was in the world two opinions alike."
—MONTAIGNE

ALEX DOW
President, Detroit Edison Company.

"We have had in late years an overdose of law and lawing, of formulas, and of experts."

ED HOWE
Newspaperman and philosopher of Kansas.

"The professors, in their magazine articles, state present terrible conditions fairly, but, when they propose remedies, are as crazy as the rest of us."

JAMES C. DE LONG
Financial writer.

"Lack of frank discussion of the utility viewpoint is the basis for a great deal of public mistrust of the industry and men in charge of its destinies."

B. C. FORBES
Writer and economist.

"It is time for responsible, high-minded utility executives to come into the open and defend themselves, their policies, their corporations. They should not permit judgment to be rendered against them by default."

FRANK A. NEWTON
Rate expert.

"It is asserted that the rates of many electric utility companies are complicated and difficult to understand. Much of this criticism is not honest criticism. It comes, to a very large degree, from those who can find nothing good in anything done by a privately owned public utility."

D. W. ELLSWORTH
Financial writer.

"It will be a severe shock to the recently acquired stability of our banks and insurance companies if, under our new system of planned economy, the dangers of present tendencies in respect to the earning power of our public utilities are not promptly recognized and provided against."

UPTON SINCLAIR
Socialist.

"Consider the Tennessee project, for example. How foolish to go on developing a set of new plants when we already have more of every kind of plant than we need! Why not use the ones we have? Will the President build a government steel plant while we are only using 16 per cent of our existing means of making steel?"

OUT OF THE MAIL BAG

The Municipal Plant of Lansing Accepts a Challenge

NOTHING ever gives me more pleasure than proof that I am right. Or have been right at a given time. There have been so many other times—probably—when I have been wrong. Omniscience is not one of my failings.

> "If any municipally owned plant can produce current today as cheaply as its privately owned rival, assuming the same taxes and the same bookkeeping, I do not know of it, have never heard of it, and will be delighted to tell about it when I find one."

That statement, made in my article in the March 16th issue of PUBLIC UTILITIES FORTNIGHTLY, was not being made for the first time. I have printed it over and over, and I do not remember that any advocate of municipal ownership has ever replied to it with facts and figures until a letter came in from Mr. Otto E. Eckert, general manager of the Lansing, Michigan, city-owned power plant. After quoting my words he wrote:

> "The city of Lansing is furnishing electricity to its customers at a net saving over any other method by which they might be served.
>
> "In addition to this, the city of Lansing has the lowest tax rate of any city in the state of Michigan above 40,000 population and has had one of the lowest tax rates for many years past. I am enclosing copies of the financial statement for the last two years."

I like that letter. The issues are squarely joined. Mr. Eckert might be able to prove his point that the Lansing plant is able to furnish current at a cheaper rate than a privately owned plant in an identical city, without shaking my conviction that public ownership is generally wasteful and inefficient in application, but if he is able to prove that point it is up to me to admit it. I meant precisely what I said when I declared that:

> "If any municipally owned plant can produce current as cheaply, . . . as its privately owned rival, I will be delighted to tell of it."

My delight is not as rapturous as I could wish, perhaps. It is possible that I am a victim of prejudice. But I shall admit that on the basis of the figures presented by Mr. Eckert, and which are accepted without demur, he has proven precisely what he started out to prove. The record of the Lansing plant can hardly be bettered. His proof, however, leaves me unshaken in the belief that the public ownership of utilities is unfair to the ratepayer, and it seems to me that Mr. Eckert's own evidence supports this contention.

INQUIRY developed the fact that the Lansing plant is one of the most successful of the city-owned plants. It is ranked by accepted authority as second in a list in which the five most efficient city-owned plants were named. This seems to be due to the fact that its management is of the first order of excellence. Mr. Otto E. Eckert, the general manager, has furnished top-notch service. No matter how good a general manager may be, however, he is more or less helpless if he is not firmly backed by the authority over him. It is at this point that most city-owned plants show their first weakness. Ward bosses and city satraps and county rajahs have too much to say about how they shall be conducted. In Lansing it appears that eight substantial business men make up the board of managers.

They are business men in charge of a business project and they do their energetic best to furnish good service and make a fair profit. Not one of them, so far as I know, is an advocate of public ownership. Mr. Eckert does not challenge this statement, but says "that is not a fair inference to make about men who are willing to admit that either a publicly owned or a privately owned utility can be run successfully." But I am not making an inference, but stating what I believe to be a fact. Whatever their beliefs may be, it is certain that they have been able to run a publicly owned utility successfully. The only thing of importance to be considered at this point, as it seems to me, is that out of the multitude of publicly owned plants in the United States, this is the first which has made a real reply to my

challenge. By that I mean that Mr. Eckert has been able to demonstrate that the Lansing plant has been profitably operated. Politics has been kept out.

IN the Lansing case the methods of bookkeeping used are those prescribed by the Michigan Public Utilities Commission for the use of all utilities. This makes the task of comparison easier, for so far as I am able to detect the only charge against privately owned utilities in Michigan which is missing from the report of the Lansing plant is that of taxes—and the city-owned plant at Lansing does not pay taxes. This omission seems not to have injured the city's treasury, for it is shown that Lansing's tax rate is lowest in a list of the ten principal cities of Michigan. It is $26.70 per thousand dollars of valuation, which is slightly less than Jackson's $29.82 and Kalamazoo's $29.94 in 1932. The seven others in the list are markedly higher. Of course, conditions in the ten are not identical.

Further questioning shows that the Lansing charge for current comes under the head of bargain offering, as compared to rates charged in states other than Michigan. Only four states west of the Mississippi can show rates as low as the Michigan average, I am informed, and these are hydraulic power states. It is a practical impossibility to compare the rate charges of various cities, because of the variance in local conditions. Against Mr. Eckert's protest, however, that the large industrial use of current furnished by the Detroit Edison and the Consumers' Power Company, the two largest utilities in the Lower Peninsula of Michigan, makes a rate comparison with the Lansing plant, largely devoted to city and domestic uses, almost valueless, I shall confront the rates for whatever interest they may offer. It is fair to point out that the city of Lansing buys all its power from its own plant and so off-sets the industrial customers of the two utilities named. I find that Lansing stands midway between the two in the revenue received and that its cost of operation per unit is almost double. Here are the figures as procured from an authoritative source:

	Consumers' Power	*Lansing City*	*Detroit Edison*
Revenue from sales of current per kilowatt hours sold ..	2.83	2.64	2.42
Cost of operation per kilowatt hours sold, less taxes	1.059	2.171	1.29

I wish to be strictly fair. Mr. Eckert takes exception to these figures, and states that the Lansing rates are lower in each class of consumers than are paid by the customers of the Detroit Edison Co. In any case it is evident that the figures quoted above show that the Lansing plant is not making a tremendous profit by its operations. It is obvious that only the profits made by the plant can be turned into the city treasury to reduce the cost of city operation. The statement is continually being made by the protagonists of public ownership that the profits made by municipally owned plants are so great that the tax rates are materially reduced. Wherever this is true—and those who know of instances are invited to communicate with me—it would simply mean that a part of the tax cost has been shifted to the shoulders of the ratepayer. Lansing seems to have been conducting this shift on a wider front than is customary in municipal-ownership towns, for the city also sells steam heat, at a profit in 1932 of $144,585. A hook-up between the steam and the electrical enterprises aids in attaining economy.

Let us recapitulate:

THE Lansing plant is peculiarly fortunate among publicly owned plants in that its operations are not hampered by political interference. There is general agreement with this statement. It is excellently managed. Its monopoly of the sale of current to the city puts it in a position fairly comparable to the larger utilities which sell to great industrial users. The Lansing consumer pays a trifle more per kilowatt hour than the customer of the Detroit Edison and a trifle less than the customer of the Consumers' Power Company. The differences are fairly chargeable to local conditions. Production costs are notably higher in Lansing, but in view of the high quality of the management this difference may also be attributed to local conditions.

It will be admitted that Mr. Eckert has fairly met my challenge, and has shown that one municipally owned plant, free from political interference, managed precisely as a first-rate privately owned plant would be, has been able to sell current as cheaply as its hypothetical opposite number would be able to do. But the story does not end there. It seems to me that the history of the successful municipally owned plant in Lansing furnishes an argument against the theory of public ownership in general, unless it is to be accepted that the ratepayer shall to some extent displace the taxpayer in carrying the financial burden of government.

IN the beginning a privately owned company furnished electricity to the city of Lansing. At this point controversy arises which I shall not attempt to umpire. The one-time owners of this property are still resentful of the fact that it was taken away from them. They maintain that they gave good service and that they were not paid the value of their property when the city took it over. Their position is that advocates of public ownership practically seized their plant, without regard to the rights of property, the liberties of the citizen, and the sacred nature of contracts, in the mad pursuit of their

socialistic plan. The rebuttal is that the service they had been giving was bad and their rates worse. Mr. Eckert writes:

> "The company showed that it was out to beat down and bag the city plant. Because it failed and fell a victim to its own greed some of its former owners have not gotten over it, even though the city paid $1,068,000 for it, a liberal price for a run-down property that cost little if any more than that."

In any event, almost as soon as the city obtained the property it became evident that more money must be put into it. My information is that it was necessary to raise the tax valuation of the city in order to issue the bonds upon which alone this money could be raised. I shall not labor this point, because Lansing may have had other needs and I wish to be perfectly fair. It is a fact, however, that in 1920 the tax valuation of Lansing was $55,115,498 and a year later the state tax commission, according to Mr. Eckert, "forced an adjustment in valuation" which boosted this total to $122,030,016, and that bonds were then issued for the necessary extensions.

Coincidentally, I am informed that electric rates were raised by 20 per cent and a year later another increase of 40 per cent was added to the original increase. This is not a matter of prime importance either way, in all probability. Mr. Eckert suggests that the privately owned plant which had been taken over by the city had tried to beat down and bag the city plant, and it is likely that some rates had been cut to the quick. There has never been any complaint of the Lansing rates of which I have heard. A period of *sturm und drang* seems to have followed the purchase of the plant, and the precise cost to the city seems to be more or less in doubt. That, again, is of no importance, for in an interesting financial statement Mr. Eckert says:

> "Comparing our balance sheet for the year ending April 30, 1925 (in order to allow all borrowed capital to get into fixed capital) with that of April 30, 1932, you will find that our fixed capital has increased $6,321,133 in seven years, that our funded debt has decreased in the same period $384,000, and that our cash on hand and sinking funds for the retirement of bonds have increased $632,798, *from earnings.*"

In 1925 the fixed capital appears in his statement to have been $4,416,203. The very important sum of $6,321,133 has been added *from earnings* (Mr. Eckert's italics) in seven years, and the fixed capital on April 30, 1932, therefore, becomes $10,737,337. I am directing attention to this because it is apparent from Mr. Eckert's statement that this fixed capital consists of money invested and borrowed up to 1925 and money earned since then. "We have borrowed no money since January, 1924." This fixed capital, then, seems to be the actual investment in the plant. There have been instances known elsewhere of so-called "fixed capital" which consisted largely of honeysuckle vines, but in Lansing it was made up of nothing but money. There are bonds outstanding and if the electric light enterprise were sold for the sum of the fixed capital and the bonds redeemed the net investment of Lansing would appear to be in the neighborhood of $8,000,000.

Taxes are imposed in Lansing at a rate of $26.70 on a 75 per cent valuation. If the plant were privately owned, then, the considerable sum of $160,800 annually, would be turned into the state treasury. A somewhat larger return would be secured if the tax rule which seems to be in vogue along the Pacific Coast were invoked. There it appears to be the habit for electric utilities to pay into various tax collectors approximately one tenth of the total operating revenue. The total operating revenue in Lansing in 1932 was $1,712,730. Under the circumstances this will be disregarded. From a privately owned company, then, Lansing should expect from the 1932 taxes the sum of $160,800.

The Lansing plant is owned by the city and, therefore, paid no taxes at all.

Lansing has invested in its plant about $8,000,000 of taxpayers'-plus-ratepayers' money. The $6,321,133 invested from earnings in the past seven years came entirely from the ratepayers, of course. A fair average interest charge on the investment would be 5 per cent. There has not been a moment in the past ten years when 5 per cent could not have been secured on a sound investment, provided, of course, that the lenders knew a sound investment when they saw one. Five per cent on $8,000,000 comes to $400,000. It appears, then, that the monetary return from taxes and from the investment should have been in 1932:

Taxes	$160,800
Interest	400,000
Total	$560,000

It will be freely admitted that 1932 was a bad year. The average population of the city was 94,300 and the average number of consumers 22,680. The kilowatt hours sold or utilized were 14,895,019 for residence purposes, 19,090,102 for commercial uses, 23,498,153 for industrial uses, and 7,243,672 for municipal uses. This was a decrease from preceding years, but in spite of that the plant made a net profit of $139,206. Mr. Eckert is properly proud of this. In spite of the hard times a reduction of 6 per cent was made in rates in September, 1931. The balance for 1932, then, as between a privately owned and the

publicly owned company, should stand:

Potential revenue from privately owned company	$560,000
Actual revenue from publicly owned company	139,206
Making Lansing's loss in 1932	$420,794

I do not guarantee that Lansing would have profited in any such sum through private ownership, of course, but merely point out that the $8,000,000 of its citizens' money could have earned a considerable income, and that the taxes on a privately owned plant would have been very sweet, indeed. Now another phase of the Lansing situation is worth considering. Mr. Eckert writes that:

> "We have collected nothing in the past year for public lighting or public water supply in Lansing, and we are carrying the light and water accounts of more than 2,000 families on city welfare."

There has never been a more brilliant proof of the statement so frequently made that the burden which should be carried by the taxpayer is shifted by public ownership to the ratepayer. No matter how rich may be Lansing's richest man, if he does not use electric light he is evading his share of the cost of public lighting and public watering. The 2,000 poor families must have been carried by city welfare, of course, but if the tax burden were equitably distributed the hypothetical richest man would have borne his share. If he goes to bed by the light of a tallow candle he does not pay a penny against that cost. And more than that.

ACCORDING to Mr. Eckert's figures—and they are accepted without demur—the sum of $6,321,133 in cash—earnings—has been added to the fixed capital of the Lansing plant in seven years. Assuming the 1932 average of 22,680 consumers to be a fair one for the 7-year period, the industrial ups and downs being taken into consideration, we discover that 22,680 goes into $6,321,133 approximately 279 times. If the items of the 22,680 had not changed, then—if the first list of 22,680 consumers had held on to the end—each would have an equity of $279 in that jackpot. This would not work out that way in real life, of course. In fact that six million dollars presumably represents profits, which would have been translated into dividends, which would have been distributed among stockholders and reinvested and spent, to the good of trade and cultural relations generally.

In fact that six million dollars seems to have been taken from one class of Lansing's people—the ratepayers—without regard to their various solvencies, and turned into city-owned property. A poor widow cooking candy on her own stove, selling it over a counter in her front room, might buy more current than the owner of Lansing's largest livery stable, if there is a livery stable left in the world. Mr. Eckert attaches importance to the fact that "the property representing that money is here in Lansing and not scattered to absentee stock-and-bondholders." The other side to that argument is that the more money brought into a town the more that town prospers. But that is merely an aside.

MR. Eckert's figures show that one city-owned electric plant, entirely free from political interference, under management of the first order, has been able to make the showing described. There is, of course, no reason on earth why any other city-owned plant should not make an equally good showing, if it can be kept wholly free from political interference and given vigorous business management. Any one who knows anything about local politics must realize what an extraordinary condition prevails in Lansing. Apart from its fiscal affairs, however, it must be apparent that the Lansing plan imposes an unfair burden on ratepayers, as opposed to taxpayers in general. A certain amount of money from the outside would have been invested in the Lansing plant under private ownership, and to the certain advantage of Lansing's business. On this investment dividends would have been paid in each year in which they were earned, to the further betterment of Lansing. In such distressing years as 1932 proved to be it is the city that must shoulder any loss on operations, instead of the "outside" stockholder to whom Mr. Eckert objects.

And there is always—there must be in a democracy—the danger of eventual political control hovering in the background.

—HERBERT COREY

What the Records Show about the Tax-free Towns of Oklahoma

Of the 68 towns in this country which have been widely heralded as "tax-less" because of the profitable maintenance of municipal plants, 56 are in Oklahoma. For several months a check-up has been conducted to determine the actual, authentic facts. The findings, some of which are surprising, will be reported in the next issue of this magazine—out July 20th.

The March of Events

Edison Electric Institute Meets to Discuss Engineering and Commercial Problems

KILOWATTS, binary vapor systems, diversity factors, thermionic tubes, banked secondaries, utilization values, radial distribution, and a host of other relatives of the electrical business, during the week of June 5th, paraded before the members of the Edison Electric Institute convened in Chicago, as the electrical men discussed the problems of their industry. Surcease from the ardors of such considerations was available at the nearby Century of Progress—a magnificent tribute to King Electricity—where the most modern forms of electric lighting and electrical equipment shout the story of the contribution of the power industry to civilization.

The chief functions of the Institute, as summarized by George B. Cortelyou, its president, are to provide a medium for the interchange of information and experience data between members; to formulate engineering standards, specifications, technical procedures, operating programs, and other instrumentalities making for the wide adoption of the best practices and the promotion of uniformity where uniformity is advantageous; and to represent the electric utility industry in joint relations with other national industrial bodies.

Electrical distribution costs were discussed at length, and the point was stressed that although the utilities should continue to study these costs, it is impossible to compare costs in different communities unless conditions are the same. Density of population, differences in load areas, changes of various kinds occurring with the passage of time, methods of allocation with respect to uniform classification of accounts and with respect to different classes of service, and other variables both as to conditions in different communities and conditions of the same utility at different times would seem to make it impossible to arrive at an average distribution cost.

A very important factor bearing on the cost of distribution has been the constantly increasing demand on the part of the customers for a higher quality and greater continuity of service. Where there are ranges and other heating elements, an interruption to service is more detrimental than in communities where the lighting load is the main part of the business. To avoid interruption and voltage changes it is necessary to increase lines and equipment. Duplication, and in some cases even multiplication, of facilities has been found necessary. The cost of such improvements must be reflected in the cost of distribution and their costs vary widely for different load areas and even for different sections of the same load area, depending upon the quality and continuity of service required.

Some idea of the cost of transmission and distribution of current, which may have been generated at a low cost, is conveyed by the fact that the physical plant of a large modern electric power system serving more than one community may consist of ten major elements: (1) Alternating current generating station, (2) step-up transformer substation, (3) high voltage transmission line, including switching station, (4) step-down transformer substation, (5) subtransmission line, (6) distribution substation, (7) distribution feeders, (8) distribution line transformers, (9) secondary mains, (10) service laterals and metering equipment. This indicates the necessity of careful cost studies when huge hydroelectric projects are undertaken for distribution over a wide area.

Objectives of still further increases in generating plant efficiency and lower cost of electrical production, it was said, induce trends toward higher rates of steam generation, an approach to the unit arrangement of one boiler per turbine, increased capacity of single shaft turbines, the use of higher steam turbines and pressures, the use of pulverized coal for large capacity boilers, combustion equipment designed for the alternative use of coal and liquid of gaseous fuels and binary vapor system. The so-called open air stations also are receiving the attention of electrical engineers.

It was regretted that the efforts towards lower generating costs have been largely offset by the constantly increasing tax burden. The utilities are now tax collectors, said Alex Dow, of the Detroit Edison Company, and they are often more efficient than some other tax collectors. He termed the method of indirect taxation of utility patrons through the companies a dishonest use of the taxing power.

It is the duty of electric utility operators, according to W. C. Mullendore, vice president of the Southern California Edison Company, Ltd., to protect the properties for which they are trustees against discriminatory and confiscatory taxation. He urged the delegates to the convention to inform users and owners of electric utilities of the dangers to service and investments existing in such taxation.

He objected particularly to taxes which would defeat their objective of widespread purchasing power by destroying much more

widely diffused purchasing power than can be recreated by the tax money so raised. He declared that a diversion into the coffers of government of the earnings which should have gone to pay investors for the use of their savings means a widespread contraction of purchasing power, and it means more than that. Inasmuch as values are dependent on earning power, the disappearance of net earnings means widespread destruction of value.

Another glaring example of taxation destroying more wealth than is received by the public treasury, he said, is to be found in those taxes which prevent the reduction of rates to millions of users of public utility services. Moreover, he stated, the failure of the government to use the taxing power in the taxation of proprietary governmental enterprises which operate side by side with privately financed tax-paying enterprises causes a differential in operating costs which the government thus creates for its own creatures and destroys values and threatens the existence of the sources of taxable wealth. It was said that the tax burden alone per kilowatt hour is today approaching the cost of its manufacture.

The hope was expressed by Bernard F. Weadock, vice president and executive secretary of the Institute, that the Federal Trade Commission investigation would not be terminated before the Commission had an opportunity to study the good the industry has done as well as the abuses by some persons. He said that the cost of the investigation to date has been $1,598,677.13, and its task is far from complete. He pointed out that the investigation has been confined to the records and books of the electric companies with conclusions based on bookkeeping figures without regard to economic facts obtaining at the time.

He said that the write-up of valuations by public utilities was shown to be about 5 per cent. This, he said, compared with an increase during the same period of 104 per cent in the value of New York city real estate, an increase of 97 per cent in wages, and an increase of 1,186 per cent in the cost of Federal government. During the same period domestic electric rates have been reduced 25 per cent. One of the criticized write-ups, it appears, occurred in 1854.

Coördinated sales efforts, it was indicated, are being pushed vigorously by means of national and local advertising and selling campaigns. The commercial departments of the utilities are making strenuous efforts to further the sales of electric refrigeration equipment, cooking and other heating equipment, and air-conditioning equipment, in coöperation with manufacturers and retailers of such merchandise. Campaigns are also being waged to educate the public as to the need and desirability of better lighting. The electrical men, it was said, have in some instances found it necessary not only to sell the equipment to customers but also to sell the idea of selling to manufacturers and retailers.

Simplicity of rate schedules is not desirable when carried to the extent of preventing flexibility and causing discrimination between customers, in the opinion of F. A. Newton, rate expert of the Commonwealth & Southern Corporation. He stated the rule that rates must be compensatory and not discriminatory and that they must also be commercially sound in order to get business. Complexity of schedules, he said, is not for the purpose of confusing patrons, but for the purpose of encouraging greater use by utility customers.

He criticized the practice of keeping some rates too high in order that a low rate might be accorded to some users as in the case of high rates for large consumption of current for appliances, cooking, heating, and air-conditioning with the result that this type of business is discouraged. The lower rates, he said, should be at a point where the average household can use appliances. Moreover, he stated that with the trend of rates downward and of taxes upward, the utilities must find ways to sell more current.

It was noted by Mr. Cortelyou that domestic electric rates now stand at 35 per cent below the pre-war level and that the average family pays only 7 cents a day for its electric service although the electric utilities have seen their volume of business fall off, their revenues decline, their earnings drop, as a result of the depressed state of business during these last few years. With respect to the demands for lower rates, it was said to be a strange confusion of ideas which would put commodity prices up in order to stimulate economic recovery and at the same time would put utility prices down, when the proper functioning of the utilities is necessary to the success of any recovery program.

Senator Refuses to Name Power Trust Colleagues

A DEMAND and a refusal to name the thirty Senators which Senator Couzens (R.) had said were dominated by power interests ended in an angry dialogue in the Senate on June 1st between the Michigan Senator and Senator Barkley (D.), of Kentucky. During the debate over the nomination of Guy T. Helvering, of Kansas, to be Commissioner of Internal Revenue, Senators Couzens and Barkley clashed over a statement made by Senator Couzens on May 11th, when he said he had been told "there were at least thirty members of this body who represented power interests."

Barkley, defending Helvering against Republican attacks, referred to Couzens' statement as "evidence of the fact that the Senator from Michigan, with all his good intentions,

with all his fine qualities, draws hasty conclusions as to the character of men with whom he associates."

"And they have proved invariably right," retorted Couzens.

"The Senator has made a statement intimating that there were thirty members of this body under the control and domination of the power interests," Barkley observed.

"That is not true," Couzens shot back as he left the chamber.

About an hour later, Couzens returned carrying a *Congressional Record* of May 11th, and interrupting Barkley, said:

"I want to apologize to the Senator from Kentucky for a statement I made just prior to leaving the Senate for my luncheon. I answered and I thought I said 'representing the interests.' The Senator was correct. I did say 'power interests' and 'power interests' is in the *Record*. I apologize to the Senator for contradicting him."

"I accept the Senator's apology for contradicting me, but I think he ought to apologize to the Senate for making the statement originally," Barkley replied.

"Would the Senator like me to name them all?" Couzens retorted.

"Yes, so far as I am concerned, the Senator can name them. Yes, go on and name them now; the Senator has brought this matter up. If the Senator wants to name any Senator on this floor who is a tool of the power interests, name him."

"I would not like to do that because I might make a mistake," replied Couzens.

Voice rising, Barkley said again:

"The Senator asked me if I wanted him to do it; I say yes. I should like him to do it."

"I said I might make a mistake."

"I thought the Senator from Michigan said a while ago he never made any."

"Oh, no, I never said that."

Labor Paper Charges Communications Monopoly

AN amazing story of an "undercover drive" to bring about the consolidation of all existing forms of communication by wire, radio, and cable into one giant monopoly was published in the national weekly newspaper *Labor* on June 6th. The news story charged that there was being contemplated the creation of the "greatest trust in the country, if not in the world" which would combine the Postal Telegraph Company, the Western Union Telegraph Company, and Radio Telegraph Company, and turn them over bodily to the American Telephone and Telegraph Company.

The news story reported that because of the possibilities of radio telegraph which "will eventually drive out service by wire," the Radio Telegraph Company under the domination of the American Telephone and Telegraph Company would "gobble up" a large number of the short wave lengths.

Taxi Convention Favors State Regulation

RESOLUTIONS urging state, rather than municipal, control of the taxicab industry were adopted on May 31st by the National Association of Taxicab Owners at the closing session of their convention in the Hotel Sherman in Chicago. Competition by cut-rate companies was condemned as harmful to the public, as well as to the regular companies. It was also voted that the president of the organization, W. W. Cloud of Baltimore, appoint a committee to call on President Roosevelt and seek to have a program adopted in line with the Roosevelt trade association views. State utility commissions, it was held, should fix the rates and limit the number of cabs in operation.

Senate Considers Regulatory Measures

ON June 8th, the Senate passed a resolution introduced by Senator Costigan (S. Res. 75) which requests the Federal Power Commission "to transmit to the Senate as soon as practicable a report showing the salary schedule of the executive officers and directors of each public utility corporation engaged in the transportation of electrical energy in interstate commerce and of all other corporations licensed under the Federal Water Power Act."

The Senate Committee on the Judiciary, through Senator Norris of Nebraska, reported favorably the Johnson Bill, S. 752, limiting the jurisdiction of the United States District Courts in cases arising out of rate orders of state commissions. A minority report was submitted by Senators Austin, of Vermont, and Stephens, of Mississippi. The report was numbered 125.

Record Breaking Lengthy Eleventh Hour Legislation Enacted

STRUGGLING to an early adjournment, the Seventy-third Congress on June 13th

climaxed what had already been a record breaking session of accomplished legislation by placing before the President for his signature three nationally important measures of direct or indirect interest to utilities and to their regulators. On that day the Senate debated and adopted the National Industry Recovery Bill conference report, which had already been adopted by the House of Representatives. This action sent the measure to the president for his signature.

Likewise, on June 13th both the House and Senate debated and adopted the conference report on the Glass-Steagall banking bill. On the same day the Senate passed the three billion and a half deficiency appropriation bill carrying funds for $3,300,000,000 public works program authorized by the industrial recovery bill.

The Glass-Steagall banking bill carries the most drastic banking reforms voted by Congress since the Federal reserve system was established twenty years ago. The long and bitter fight over the measure was brought to a close when threats of filibusters melted away to the amazement of backers of the bill, and the Senate-House compromise was approved.

Complete reform of the far-flung American banking system, with a possibility of a unified system eventually replacing the historic dual Federal and state systems, will flow from the measure congressional backers and banking leaders said. The effect of the measure on the entire banking system was declared by experts to be more important than the establishment at the present time of a nation-wide system of depositors' insurance. While state banking systems are preserved under the bill by being allowed to join the depositors guarantee system, congressional experts say eventually all banks will enter the Federal reserve system and many state banks will be replaced by national institutions.

Of particular interest to utilities is the power given to the Federal reserve board to require banks to loan money for commercial purposes and not speculation. If a bank is loaning too much money for stock speculation, the Federal reserve board may suspend it. This provision was expected by many utility leaders to make the future marketing of utility securities easier, especially utility bonds and preferred securities, since bank loans would be unavailable for investment in more speculative securities.

The national recovery bill, including the industrial control feature and the $3,300,000,000 works program was by far one of the greatest undertakings of its kind on record and designed to provide for economic planning by the government and industry outside the antitrust laws. It was put through in remarkably short time and has the ultimate effect of extending governmental regulation over all major industries to an extent somewhat similar to the control now exercised by state commissions over public utility companies, with the added feature that the governmental control could be exercised to regulate employees, wage scales, and working conditions. Its sponsors believe it capable of putting six million persons back to work by next winter, thus breaking the backbone of the depression.

President Roosevelt Makes Regulatory Appointments

DURING the past fortnight, President Roosevelt had sent to the Senate a number of appointments for regulatory posts in the Federal government.

On the Muscle Shoals board, the president rounded out his previous selection of Dr. Arthur E. Morgan, as chairman, with the appointment to the remaining two places of associate commissioners of David E. Lilienthal, who has been a member of the Wisconsin commission, and Dr. Harcourt Alexander Morgan, president of the University of Tennessee. Commissioner Lilienthal is, of course, well known to readers of this magazine. Dr. Morgan, of Tennessee, has long been interested in the same sort of agricultural-industrial development which President Roosevelt visualizes for the Tennessee valley, having, in fact, done pioneer work in that field on a small scale in his state. He is a native of Canada and a graduate of the Ontario Agriculture College. He moved early to the United States and became an instructor in entomology at Louisiana State University. From there, in 1905, he went to the University of Tennessee as director of the experiment station of the college of agriculture, and in 1919 he became president of the university.

A Washington dispatch to the New York *Times* of June 8th states that the administration is considering three names for the important post of chief engineer of the Muscle Shoals board. The names under consideration were reported to be Hugh L. Cooper, consulting engineer of New York; Morris L. Cooke of Philadelphia, a trustee of the Power Authority of the State of New York; and J. L. Savage, chief designing engineer of the Bureau of Reclamation stationed at Denver.

As long expected, a Washington dispatch to the New York *Times* of June 10th stated that President Roosevelt, through a member of his cabinet had offered the post of Federal Coördinator of Transportation to Joseph B. Eastman of the Interstate Commerce Commission.

The formal offer was said to await only the signing of the Emergency Railroad Act, which was subsequently passed by both houses and sent to the President for his signature. Commissioner Eastman was expected to accept.

The President appointed and the Senate has

confirmed Hon. Basil Manly of the District of Columbia to succeed Commissioner Ralph Williamson, deceased, for a term of five years from June 22, 1933, of the Federal Power Commission. Commissioner Manly had been a political economist in private practice and formerly connected with the People's Legislative Service. On the Federal Trade Commission, to succeed Commissioner McCulloch, deceased, for the term ending September 25, 1933, the President has appointed, and the Senate has confirmed, Hon. Raymond B. Stevens of New Hampshire, one-time special counsel for the public service commission of New Hampshire, later Congressman from New Hampshire, and as such author of the act creating the Federal Trade Commission, later a member of the United States Shipping Board, and for the past several years foreign advisor to the King of Siam.

Alabama

Birmingham Phone Rate Case Postponed

CITY Attorney Wynn of Birmingham was advised by the Alabama commission on June 2nd that the rate case of the Southern Bell Telephone and Telegraph Company had been postponed from June 6th to a date in August to be later designated. The postponement was in response to a request of Mr. Wynn who stated in a letter to the commission that the city had not had time for the hearing, and in view of the Birmingham Electric Company case the city wanted more time in which to prepare the phone rate case for the city and for the public.

Investigations made by the engineering department of the Alabama Public Service Commission show that monthly charges for telephone service in Alabama are generally higher than in Louisiana and Tennessee, lower than in Florida, Georgia, and the Carolinas, and about on a level with those in Kentucky and Mississippi, according to a report published in the Birmingham *News*. Compared with Southern cities of the same class, said the report, based on population, the monthly charge for individual business telephones is $10 in Atlanta and Louisville, $9 in New Orleans, $7.50 in Memphis and Nashville, and $8.50 in Birmingham.

South's Oldest Utility Goes Into Receivership

THE Mobile Gas Company, one of the public utility properties controlled by the Consolidated Electric and Gas Company, said to be one of the oldest if not the oldest gas company in the South, was placed in receivership on June 2nd by Federal district court on petition of James H. Motz, a creditor of Atlanta, Ga. The utility, in its reply to the court, consented to the petition. Judge Robert T. Ervin, in ordering receivership, appointed as co-receivers for the company J. W. Gates, of Mobile, division manager for several properties under the control of the Consolidated Electric & Gas Company in the Southern region, and George A. Jones, a Mobile auditor.

The history of the company dates back to about 1834. It was owned by the Dawes interests of Chicago for a number of years prior to 1929, when it was sold to the Central Public Service Corporation of Chicago. Its control later passed to the Consolidated Electric & Gas Company, of New York, through a reorganization. For the last few months, the Mobile Gas Company has been administered under the guidance of Stone & Webster, eminent public utility engineers, employed by the Consolidated Electric & Gas Company. The operations of the company will continue under the guidance of the co-receivers.

Mr. Johnston, attorney for the gas company, said much of the company's indebtedness was accumulated through the advancing of funds to pay bond interest and in expenditures to revamp, rehabilitate, and extend distribution system in connection with the advent of natural gas in the early fall of 1930. The company still has a plant for the manufacture of artificial gas but its operation was suspended after the natural gas supply was obtained.

Municipal Ownership Plan Considered

PETITIONS requesting the Birmingham city council to submit to the voters of Birmingham the question of municipal ownership and operation of the electric light and power system, circulated by the United Utilities Consumers Association, have been signed by more than 3,000 persons, according to a statement on June 12th by Paul Parsons, president of the association. The petitions were left at cigar and drug stores, and call attention to the Muscle Shoals power plant and urge that "in order to secure the full benefit of government operation there for ourselves

and posterity, and believing that only through and by means of municipal ownership and operation of the electric light and power system, including transmission lines, can this be obtained," the city commission should be required to take steps to the end that the people might vote on the question.

On June 7th, the people of Sheffield voted 659 to 37 for floating a bond issue of $150,000 to set up plans for a municipal power plant. The action was taken in view of cheap power which was expected to be made available at the Muscle Shoals plants when the Tennessee Valley Authority inaugurates its program. Sheffield is one of the three Alabama cities very near to the Muscle Shoals plant.

Arkansas

Statewide Probe Ordered

A LITTLE ROCK dispatch in *The Wall Street Journal* on June 2nd stated that a statewide investigation into gas and electric rates charged by the Arkansas Power & Light Company in cities it serves in Arkansas has been ordered by the state corporation commission. The order was prompted by numerous requests for such a probe, the commission stated. Harvey C. Couch, one of the directors of the Reconstruction Finance Corporation, is president of the utility company.

California

City Mayor Has Ready Answer on How to Spend Money

MANAGER Cahill of the San Francisco Public Utilities Commission promptly responded to Mayor Rossi's request of all city departments for a list of projects that might be financed by the Federal government under the Industrial Recovery act with a program that is described by the San Francisco *News* as being "impressive and almost startling in its size."

Manager Cahill declared that San Francisco could make good use of no less than $16,000,000 for construction work on the Hetch Hetchy water system and the municipal water department that would be self-liquidating and eventually highly profitable. Mr. Cahill also proposed that the city apply for $4,045,000 to raise the O'Shaughnessey Dam 85 feet and to build the Red Mountain bar power plant, and for another $12,000,000 to extend and improve the water system, beginning with a pipe line from Crystal Springs.

It was doubtful on just what terms the city would borrow from the government, but Manager Cahill expressed his hope that the projects would be eligible under that section of the recovery act which provides for an outright Federal grant of 30 per cent of the funds and liberal borrowing terms for the other 70 per cent.

Gas Firm Offers Rate Cut

A VOLUNTARY reduction of rates to consumers amounting to $1,000,000 a year was offered on June 3rd by the Southern California Gas Company through the state commission. The company serves scores of communities in Los Angeles, Riverside, San Bernardino, and Kern counties and a large part of the San Joaquin valley. The offer was made by A. B. MacBeth, president of the company, as the commission was about to resume its hearing in Los Angeles to determine whether the rates should be cut. Each representative present expressed opinion that the offer was acceptable, but the representative of Los Angeles suggested that under the city charter the city council must pass upon it. The Southern California Gas Company also agreed to make refunds to its consumers aggregating the sum of $250,000.

Meanwhile, officials and others seeking reduced gas rates for domestic service in Ventura county placed their case in the hands of the state commission for an investigation and a subsequent hearing, according to a disclosure by Councilman D. J. Reese, chairman of the Ventura city council's public utilities commission. Mr. Reese's report also stated that while "municipal ownership may be desirable, it would be unwise to submit a bond issue which would necessarily greatly increase taxation, at this time."

Colorado

Worth Allen Answers Otto Bock in Suit

IN an answer filed in the district court on June 6th, Worth Allen, member of the Colorado Public Utilities Commission, denies he is holding his position unlawfully as alleged in a complaint entered by Otto Bock, who says he is entitled to Allen's post. Commissioner Allen contends the senate of the twenty-ninth general assembly rejected the nomination of Bock on May 9th, and therefore he, Allen, is entitled to a decree of the court adjudging him to be the qualified holder of the position. The answer specifically denied that the senate consented by a majority roll call vote of all members to the nomination and appointment of Bock. Otto Bock, in his suit, claims his appointment as a member of the commission was approved by the senate and that he became entitled to the place soon afterward when he took the oath of office. The dispute over the position resulted after the senate confirmed Bock's appointment and then, upon voting to reconsider the same, reversed itself on the appointment.

Georgia

Governor Declares War on State Commission

ON petition of the Georgia Federation of Labor, Governor Eugene Talmadge on June 6th cited the state public service commission to appear before him on June 26th and show cause why it should not be removed from office on charges of conspiracy to create public utilities monopolies. While the petition specifically mentioned the Georgia Power Company, the governor's order embraced every public utility company in the state, and directed that the commissioners, five in number, produce the inventories and appraisals of every utility company in the state. Through favoritism, the petition charged, the commission has conspired with public utilities of the state to build up monopolies and charge excessive rates for service.

In ordering the commissioners to appear at the hearing on June 26th at 11 o'clock, Governor Talmadge announced that it would be open to the public. The following day five members of the Georgia commission denied the charges and countered with the intimation that the petition to the governor was just another chapter in the fight of organized labor against the Georgia Power Company. The commission's statement said in part:

"For several months in the recent past, J. C. Savage, as attorney for certain labor groups who signs the petition to the governor, has over the radio and through the press sought to discredit the work of the Georgia Public Service Commission. This gives the commission an opportunity to repel the false charges and insinuations that have been made by Mr. Savage. We welcome this opportunity to acquaint our chief executive, the governor of Georgia, as well as the people throughout the state with the true facts."

Illinois

Utilities Offer Voluntary Rate Cut

REDUCED rates on gas and electricity in Chicago and suburbs were to become effective July 1st, Benjamin F. Lindheimer, chairman of the Illinois commission, announced on June 12th after a conference with James Simpson and George A. Ranney, chairman and vice chairman, respectively, of the Commonwealth Edison Company, the Peoples Gas Light and Coke Company, and the Public Service Company of Northern Illinois. The amount of the reduction was not given, Mr. Lindheimer explained, because the utilities offered a reduction of approximately $4,000,000 a year, based on 1932 business, and the commerce commission asked a much greater reduction. Another conference was scheduled for later in the week, at which it was expected that an agreement would be reached.

Mr. Lindheimer said he mentioned a number of phases of utility operation which Mr. Simpson and Mr. Ranney agreed to discuss with engineers of their companies. These included the charges made for depreciation reserve, the price paid by the utilities for coal, losses in merchandising, rentals, execu-

tive salaries, and tax accruals. It was the commerce commission's viewpoint that the companies set aside too large an amount for depreciation, which consequently reduces the amount of income available for dividends.

Earlier during the same week, Governor Horner criticized the public utility companies in Illinois in a special message to the general assembly on June 6th urging passage of a measure to give the commerce commission the right to reduce, as well as raise, utility rates. He criticized particularly the attitude of some of the former state commissioners whom he said had not "sufficiently assumed the duty of protecting the public interest." The governor urged the passage of the Sinnett bill and suggested the addition of amendments that would allow the commerce commission to control the use of earned surplus of the utilities, to prevent speculation and misuse of funds to guard against impairment of credit. He also suggested provisions that would prohibit contributions by the utilities to political campaigns; a provision to prevent "preferred lists" by requiring that operating utility companies secure the highest possible price for their securities, and an amendment requiring the commission "in fairness to the companies" to authorize the utilities to recoup by amortization any losses sustained if rate reductions ordered by the commission are subsequently held to be too low.

False Teeth Issue in Bus Application

FALSE teeth and their ability to withstand the rigors of modern transportation became an issue at a hearing of the Illinois commission on June 6th. Opposing an application of the Chicago motor coach lines, Attorney Frank M. Dooly declared:

"I'll defy anyone to take a ride on a Chicago bus and have the plate of his false teeth intact at the end of the ride. That is, if he has false teeth."

James G. Condon, attorney for the bus company, promptly displayed his own plate—uncracked—and declared he had been riding busses for years.

Kansas

Statewide Phone Rate Probe Ordered

ELEVEN major telephone companies operating in Kansas are to be ordered by the state commission to file with it detailed statements showing their book valuation of each of their exchanges and their revenues and expenditures for each exchange. The commission announced on June 6th in a statement by Chairman Homer Hoch, that the order was being prepared and would soon be issued. The chairman said eleven companies, each doing a gross business of more than $50,000 a year, and serving more than 80 per cent of the telephone users in the state, would be involved. He did not name the companies on that date.

He pointed out that the proposed accounting showing had never been required and that the companies had previously been required only to file statements covering their system as a whole. Under that system there was no way for the commission to know what the companies claim as to the valuations and revenues of any particular exchange, which, it was said, greatly handicaps the work of the commission in its effort to secure just and reasonable rates.

Kentucky

New Kind of "Taxless" Town Discovered

THE *Lions Magazine* for June, 1933, offered as a candidate for the country's most prosperous town a Kentucky community estimated under the 1930 census as having only 1,108 inhabitants. The item stated:

"This model town has no debt of any kind. All its current bills have been paid, all its expenses for 1932 have been met, its 1932 revenue has not been touched, and it has in its treasury a balance of $23,687.82. The interest from this pays the light and water bills.

"And of course this model town has a Lions Club, which is one reason for its marvelous prosperity.

"The name of the town? Oh, yes—it is Wickliffe, Ky., and it stands on the hills overlooking the Mississippi river a few miles below the mouth of the Ohio.

"If you ask 'how come' that Wickliffe is in such an enviable financial condition, you

will be told that it got its start that way when the citizens got tired of paying for inefficient and costly political administration of the municipal lighting plant and sold it to a concern which makes a business of generating and selling current.

"With the money in hand, it was easy for the town to start out on a cash basis, and this has proved such a saving that everyone is delighted."

Wickliffe is served by the Kentucky Utilities Company.

Louisiana

Commission Chairman Announces Regulatory Plan

CHAIRMAN Harvey G. Fields of the Louisiana Public Service Commission recently announced that the statewide telephone rate investigation would be extended so as to include installation charges, transfer of service charges, extension cord charges, and cradle phone rates. He also stated that on June 13th the commission would start its investigation as to installation charges and extraordinary charges of all kinds. In this connection it will be remembered that last March Chairman Fields succeeded in securing a united agreement on the part of all electric and gas companies reducing their meter deposit charges from $10 to $5 for the year 1933, in all towns of 5,000 population, or less. In the interest of lower utility rates for the public, it was hoped that Chairman Fields would be equally successful in his endeavors with respect to telephone charges.

The Louisiana commission recently forwarded to Secretary McGinty, of the Interstate Commerce Commission, a protest against the plan of the rail carriers to handle Docket No. 25135 (the surcharge case), under a shortened procedure, and further protested against any interference on the part of the Interstate Commerce Commission on Louisiana exemptions in the surcharge case, because of the fact that a three-judge Federal court in the eastern district of Louisiana had sustained an injunction proceeding brought by the Louisiana commission against the Interstate Commerce Commission.

Chairman Fields was elected a few months ago as chairman of the public service commission, succeeding Francis W. Williams of New Orleans, and was formerly a prosecuting attorney and later state senator, and succeeded the then governor and now United States Senator Huey P. Long, as his successor by appointment, in 1928, serving to December 1930, when he was reëlected for a 6-year term.

Massachusetts

Commission Impatient at Long Phone Rate Case

DECLARING that the hearing for reduction in rates charged by the New England Telephone Company "has got to come to an end before a great while," Acting Chairman Hardy of the department of public utilities informed Wycliffe C. Marshall, representing a group of petitioners, that the commission is not going to hear a rehash of testimony that has been gone over before. The case has been before the commission since January, 1930. The telephone company submitted an exhibit which showed that Marshall's statement that the change over from the manual to the dial system resulted in a loss of $824,231 in 1930 in Massachusetts was incorrect. The company's figures, Chief Engineer Manson stated, show that as a result of the change-over there was a profit of $251,333, or $144,702 greater than had the company continued on the manual system.

Joint State Compacts on Interstate Utility Regulation Asked

GOVERNOR Ely on June 7th sent a special message to the legislature in which he recommended the enactment of legislation which would empower the state department of public utilities to enter into compacts with New York state and other Eastern states for the control and regulation of rates and charges for electricity and gas transmitted between such states.

Michigan

House Retains Utility Board

ABSENCE of fifteen Democratic representatives, including eleven from Wayne county, on June 10th spelled defeat for the administration plan to abolish the Michigan Public Utilities Commission as now constituted. Of six pending bills to abolish or reorganize the commission, the administration succeeded in prying only one out of committee, when the House State Affairs Committee on June 9th reported a bill to reduce the number of commissioners from five to three. Defeat of the bill deprived the administration of the hope, according to the Detroit *News*, of replacing scores of Republican jobholders with Democrats. The Senate State Affairs Committee on the same day refused by a vote of three to three to report out another bill to abolish the commission.

Detroit Seeks Utility Rate Cut

RENEWED demands for an immediate cut of 10 per cent in electricity rates and for an appraisal of the Detroit Edison Company's properties on which to base new rates will be made under a resolution adopted by the Detroit city council on June 14th. The request will be directed to the governor, the attorney general, and the commission. The city petitioned the commission early in 1932 for rate revisions, asking for a temporary reduction pending outcome of investigation, but as yet no reduction has been made.

Minnesota

Utility Studies Gas Rate Suggestion

THE Minneapolis Gas Light Company on June 8th began to assemble its experts for the study of a new gas rate schedule for manufactured gas suggested to it the previous day by the Minneapolis city council gas committee. The schedule adopted by the committee was transmitted to the company with the request that the company be prepared to state its attitude. It provides for an average rate reduction of 19.4 per cent, and would reduce the company's revenues by $865,000 on an amount of business equal to that done in 1932, when its revenues were reported by city experts to be $1,585,000, and would cut the bill of the average gas consumer, using 3,000 cubic feet a month, from $2.89 to $2.34.

The rate proposal was received by the Minneapolis Gas Light Company without comment. The attitude of the committee as to whether it would be willing to compromise, should the company submit a counter-proposal for a smaller cut, could not be learned at that time.

The city council committee on June 5th had a hearing on a proposal to bring natural gas from Texas and Kansas fields to Minneapolis. During the hearing, two advocates of Montana natural gas told the committee that the latter would be a cheaper and more desirable fuel.

Mississippi

Utilities Must Pay State Sales Tax

CHANCELLOR V. J. Stricker, in a far-reaching opinion handed down in the Hines county chancery court on June 2nd, ruled that power companies and other utilities have no legal right to pass on to consumers Mississippi's 2 per cent sales tax. In so ruling, the court issued a mandatory injunction restraining the Mississippi Power & Light Company from adding the sales tax levy to their customers' bills and instructed the utility not to discontinue service to any customers who refused to pay the tax. Attorneys for the Mississippi Power & Light Company are planning to appeal to the state supreme court.

The action arose when Cecil D. Ross, a resident of Jackson, refused to pay the tax which had been added to his gas service bill. Judge Stricker's opinion held that the sales tax, in a legal sense, is not a sales tax, but a privilege tax to be borne by the business against which it is levied.

New York

Immediate Rate Cuts Blocked by Court's Ruling

PUBLIC utility rate experts, after preliminary study of a decision by the supreme court in Albany county (reported in "The Latest Utility Rulings" of this issue), expressed the opinion on June 14th that the ruling would block the public service commission in its plan to order temporary rate cuts throughout the state, according to a news item in the New York *Times*. The decision, handed down on June 9th by Justice Schenck of Albany, granted the Rockland Light and Power Company a stay against an order of the New Pork Public Service Commission directing it to file a temporary schedule of reduced rates, pending final adjudication of a rate case pending in the appellate division of the state court.

Jackson A. Dykman, of the law firm of Cullen & Dykman, Brooklyn, which represented the Rockland Light and Power Company, thought that the Albany decision would create a legal precedent to prevent a general rate reduction through orders directing the filing of temporary schedules.

Although Chairman Maltbie. of the commission, could not be reached, it was said on behalf of the state commission that the effect of the decision would not be that anticipated by spokesmen for utility companies. The decision, it was pointed out, specifically refrained from passing on the merits of the commission's order in the Rockland case, and merely granted a stay against the enforcement of the order pending the outcome of appellate proceedings. The Albany ruling, in the opinion of utility lawyers, is not absolutely binding upon the supreme court justices outside the Albany district.

Pennsylvania

Governor Signs Utilities Bill; Vetoes Probe

DISREGARDING demands of two most progressive newspapers of the state, the Philadelphia *Record* and the Pittsburgh *Press*, Governor Pinchot signed the McClure utility bill which revises the organic law of the state for the regulation of public utilities. At the same time, on June 3rd, the governor vetoed the McClure resolution providing for $100,000 for a continuance of the senate investigation of the utilities and the Pennsylvania Public Service Commission, insisting that the investigating committee is "not on the level."

The committee asked if the governor "feared" any inquiry "involving his appointees" to the commission. In his veto message Governor Pinchot said the committee's inquiry was a "fraud and a sham" and asserted there was no sense in permitting it to "squander" $100,000.

While drafting the caustic reply to the governor's veto message, the committee left to Franklin Spencer Edmonds, its counsel, the decision on whether the inquiry will proceed in defiance of the governor's veto. Edmonds promised to issue a statement from his Philadelphia office outlining a report to be submitted to the committee. If Edmonds advises the committee that it can continue to function despite the veto of the continuing resolution, a meeting in the near future will be arranged to map future hearings, it was stated in a news item in the Philadelphia *Record* of June 13th.

Tennessee

Newspaper Campaigns On Phone Rate Charge

THE Knoxville *News Sentinel* has been for some weeks conducting an active "campaign" against the monthly 50 cents extra charge for the cradle or so-called French type of telephones in Knoxville, pointing out the lower rates for such service in other states. On June 3rd, the *Sentinel* carried on its first page a coupon insert addressed to the Southern Bell Telephone and Telegraph Company in a form designed for the signature, address, and phone number of telephone users protesting against the charge for such service. Readers of the newspaper were urged to cut out and sign the printed coupon and send it to the utility company involved.

The Latest Utility Rulings

Lower Court Checks Commission New Rate Reduction Policy

THE avowed intention of the New York commission to order into effect "temporarily" reduced utility rates pending a formal and final determination was given its first setback on June 12th by a lower state court, when Justice Gilbert V. Schenck of the supreme court for Albany county granted a "stay of execution" of the commission's recent temporary reduction order as affecting the electric rates of the Rockland Light & Power Company. The court did not pass upon the validity of the order—as that matter is now before the intermediate appellate court of the state—the supreme court, appellate division; Justice Schenck's decree merely stayed the enforcement of the commission's order pending the outcome of the higher appellate proceedings. The stay was granted upon the filing of bond by the utility to protect the consumers in the event that the commission should be ultimately victorious, because the court pointed out that otherwise the utility could not possibly be protected from the intervening loss in the event that the appellate proceedings were finally resolved in its favor. The court was of the opinion, however, that the *prima facie* evidence submitted appeared to entitle the electric utility to such relief.

In his memorandum opinion, Justice Schenck said that, in effecting temporary rate reductions under the special powers conferred by § 72 of the Public Service Commission Law, the commission must take care that its rate is reasonable and not confiscatory since a temporary rate may be as confiscatory as a finally established rate, and as well may cause irreparable injury. The court conceded that it might well be the intent of § 72 to allow the commission to fix temporary rates without a complete determination of the rate base, but that it had no right to exclude testimony which would clearly indicate that the proposed temporary rates would be confiscatory, even though the consideration of such evidence might require a prolonged hearing.

It appeared from the evidence consisting of testimony and exhibits offered by the utility that the commission committed prejudicial error in excluding such evidence which appeared to establish *prima facie* that the temporary rates prescribed by the commission would yield a return of less than 4 per cent upon the value of the utility's property. The court said the exclusion of such evidence in itself would warrant a suspension of the enforcement of the New York Public Service Commission's order.

Another interesting point made by Justice Schenck in his memorandum opinion was as follows:

> "Furthermore, the commission in arriving at these temporary rates erroneously took into consideration negotiations had between the petitioner and its consumers for a settlement of certain rate cases then pending. These negotiations were had between the petitioner and its consumers with a view of fixing a permanent rate, and apparently failed to materialize into a definite agreement. It is well settled as a matter of law that an advantage cannot be taken of an offer made by way of compromise and that any party may with impunity attempt to buy his peace. Evidence of an agreement by way of compromise is not admissible. (Tennant *v.* Dudley, [1895] 144 N. Y. 504). Rate litigation is costly and a compromise rate offered by a utility company in an endeavor to buy its peace with its consumers does not necessarily mean that such rate will produce a fair return."

Rockland Light & Power Co. v. Maltbie et al.

Texas Antimerchandising Case Reversed by Higher Court

THE third court of civil appeals on June 7th dissolved an injunction granted by the district court of Travis county restraining the San Antonio Public Service Company from purchasing and selling gas and electric appliances and from operating motor busses for sight-seeing parties in San Antonio and within the 5-mile limit. The suit was originally brought by Attorney General James V. Allred to enjoin the Public Service Company from doing certain acts alleged to be in violation of the law and of its corporate powers. After the filing of the suit, the company ceased selling gas and electric appliances in San Antonio. However, the company continued to use space in its main office for demonstrating and displaying for various merchants all kinds of gas and electric appliances, and paid salesmen to induce its customers to purchase such appliances from the merchants selling them.

The lower court had granted the injunction sought by the attorney general. This judgment of the lower court was reversed in everything except an injunction restraining the company from maintaining an appliance business at Seguin, which was affirmed. All contentions made by the Public Service Company in its appeal were practically sustained. The opinion was written by Associate Justice M. B. Blair. The company does not sell electricity to the public at Seguin. It merely sells, when needed, power to be distributed through the municipality's system to the city's customers. The court held that it is within the implied or incidental powers of the utility to engage in the purchase of gas and electrical appliances and the sale of same to its customers, and also to operate sight-seeing busses in connection with its street railway business. *San Antonio Public Service Co. v. Allred.*

Virginia Commission Cuts Rates for National Capital Suburbs

THE Rosslyn Gas Company, under an order of the Virginia Corporation Commission entered May 31st, was required to put into effect revised schedules of rates for gas to be charged consumers in Arlington and Fairfax counties, which involve a decrease of 30 cents per thousand cubic feet. Arlington and Fairfax counties are situated just across the Potomac from the city of Washington and include a number of suburb settlements to the capital city, wherein numerous Federal employees reside.

Heretofore, the consumers have been charged $1.50 per thousand cubic feet. The reduction amounts to about 20 per cent. The commission found that the present fair value of the company's property as of December 31, 1932, upon which it is entitled to earn a return, was $505,200, and it was calculated that the decrease of 30 cents per thousand cubic feet would produce a return of 5.7 per cent on that valuation. This was held to be a fair return. The commission found that the net return upon the rate base under the prevailing rates, with adjustments for wholesale prices of gas, was approximately 11 per cent. In view of this it was held that some decrease was necessary.

The commission, in reaching that conclusion, determined that the reasonable price for gas purchased wholesale by the Rosslyn Gas Company from the parent company, the Washington Gas Light Company, should not exceed 40 cents per thousand cubic feet and that for the wholesale gas sold by the Rosslyn Gas Company to the Alexandria Gas Company there should be a differential of not less that 4 cents per thousand cubic feet. The action of the

commission was regarded as a victory for the public utilities commission of Arlington county, which figured as the complainant in the case. Hearings on this petition were begun in February, 1933, and were concluded a month or so later. Since then the corporation commission had had the matter under advisement. The reduced schedule affects only consumption up to 2,500 cubic feet as there was no complaint against the charge for consumption in excess of that amount. *Re Rosslyn Gas Co.*

Unauthorized Commission Condition Invalidates Certificate Grants

A RULING of the New York court of appeals holding that attempted certificate grants by the New York commission in 1923 and 1926, respectively, were void, has had the strange effect of sustaining a subsequent action of the commission with respect to the same situation. This unusual result came about in this fashion. In 1923, the commission issued to one Fisher a certificate to operate a bus line between Nyack and Rockland counties. Attached to this certificate was the express condition that it might be revoked by the commission for failure to operate or for other sufficient cause. Fisher assigned his certificate to the Rockland Transit Corporation, with the commission's consent, the same condition being imposed. This corporation in turn assigned the certificate to the Northern Valley Bus Line, Inc., and again the condition was imposed by the public service commission in its order approving the assignment.

Subsequently, the Northern Valley Bus Line Company in 1926 received another certificate directly from the commission for operation between South Nyack and the New Jersey line. This certificate likewise had the condition authorizing the commission to revoke it. About 1928, without authority of the commission, the holder of both certificates, which had then changed its name to the Public Service Interstate Transportation Company, abandoned the service and allowed it to be operated by a New Jersey corporation. Shortly thereafter the commission issued a rival certificate to Tappan and Nyack Bus, Inc., and this new competitor filed a complaint asking that both outstanding certificates of 1923 and 1926 be revoked. The commission sustained the complaint and revoked both certificates in 1930. An appeal was taken on the ground that the public service commission of New York had no authority to revoke a certificate of convenience and necessity once issued until the subsequent enactment of a comparatively recent law of 1931 (Chap. 531). But the New York Court of Appeals conceding this point went further and held that before 1931 the New York commission had no authority to attach such conditions to its certificates, and such jurisdiction in relation to such certificates before the 1931 law was apparently confined to granting or refusing applications, and that the statute then in effect did not recognize a limited or qualified certificate.

Since the statute gave the commission at the time of the issuance of the former certificates no right to impose such condition upon its granting, the court held that no valid certificates were ever granted, and concluded with the remark that "inasmuch as respondent never acquired a valid certificate, it suffered no injury by revocation." The order of the appellate division was reversed and the proceeding was dismissed. *People ex rel. Public Service Interstate Transportation Co., Inc. v. Public Service Commission et al.*

Kansas High Court Voids Antimerchandising Law

OF first rank importance to the utilities and their regulators is the recent decision of the Kansas Supreme Court, declaring unconstitutional a statute of that state, enacted in 1931, prohibiting public utilities from selling gas or electric appliances or otherwise engaging in so-called "merchandising activities." It will be recalled that Oklahoma enacted a similar law and similar legislation was considered by almost a score of other state legislatures. The Kansas decision may act as a deterrent to check this legislative epidemic which at the time seems to be gaining momentum.

The decision handed down on June 10th by Justice Hutchinson had the following syllabi:

"Where a public utility corporation is authorized to do business in Kansas in the manufacture, purchase, supply, and distribution of artificial and natural gas, the sale of gas appliances by it, under the facts and circumstances set out in this opinion, is intimately connected with and incidental to the sale and distribution of gas, and is an implied power of such company because it directly and proximately tends to accomplish the general purpose for which the company was incorporated.

"That Chapter 238 of the Session Laws of 1931 is unconstitutional and void because it is in violation of the Fourteenth Amendment of the Constitution of the United States in that it denies to certain individuals, firms and corporations the equal protection of the law."

The appeal was taken by various gas and electric companies including the Cities Service group, which sought to restrain the state attorney general from enforcing the law. *Capital Gas & Electric Co. et al v. Boynton.* (*Nos. 30598, 30599 et al.*)

Other Important Rulings

THE New York Court of Appeals has sustained the right of a taxpayer under § 51 of the General Municipal Law of that state to maintain an action to restrain the use of the streets of the city of New York by a bus carrier attempting to operate under a void or illegal franchise. The taxpayer's complaint had alleged that the bus carrier had failed to comply with provisions of §§ 74 and 1458 of the Greater New York Charter which forbid carriers to operate in New York city without a permit or secondary franchise. The court held that if the taxpayer plaintiff's contention is maintainable, the bus line has no right in the street. It is a trespasser and any person may bring action as a taxpayer to enjoin its operation. The court did not pass upon the sufficiency of the taxpayer's allegations, but merely upon his right to have a day in court to prove them, and as to his right to relief requested in the event that he could prove them. *Blanchard v. City of New York et al.*

The Ohio Supreme Court has held that "time is of the essence" in construing those sections of the General Code (§§ 543 and 614–43) which have to do with the filing of applications for rehearing before the public utilities commission of that state. The court pointed out that the statutory time for filing applications for rehearing so designated is a jurisdictional fact limiting the commission's power to entertain a subsequent proceeding. In the case at bar it was pointed out that an order made by the commission, entered upon the record, and service made upon the parties entitled thereto on the same day, could not be subject to an application for rehearing filed more than thirty days thereafter. *City of Dover et al. v. Ohio Public Utilities Commission et al.*

NOTE.—The cases above referred to, where decided by courts or regulatory commissions, will be published in full or abstracted in *Public Utilities Reports.*